Shri Raghunathrao Ganpatrao Vs. Union of India

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Court : Supreme Court of India

Decided On : Jan-04-1993

Reported in : AIR1993SC1267

Judge : Lalit Mohan Sharma, CJI,; S. Ratnavel Pandian,; S. Mohan,; B.P. Jeevan Reddy and;

Acts : Constitution of India - Articles 11,13, 14, 19, 21, 25, 26, 27, 30, 31(1), 32, 51, 245, 248, 278, 291, 300, 362, 363-A, 366(22), 368 and 370; Indian Independence Act, 1947; Government of India Act, 1935 - Sections 5; Code of Civil Procedure (CPC) - Sections 60(1) and 87B; War Damage Act, 1965

Appeal No. : Writ Petn. Nos. 351 of 1972 with 798 of 1992 (with I.A. Nos. 1, 2 and 3 of 1992)

Appellant : Shri Raghunathrao Ganpatrao ;sri Srikanta Datta Narasimharaja Wadiyar, Mysore

Respondent : Union of India;union of India

Advocate for Pet/Ap. : Raghunathrao Ganpatrao, Adv

Judgement :

ORDER

S. Ratnavel Pandian, J.

1. These two Writ Petitions call in question the constitutional validity of the Constitution (Twenty-sixth Amendment) Act of 1971 inter alia, on the ground that it violates the basic structure and essential features of the Constitution of India and is, therefore, outside the scope and ambit of constituent powers of the Parliament to amend the Constitution as provided under Article 368 of the Constitution. In addition, certain directions or suitable orders are sought for declaring that the petitioners continue to be the Rulers or the 'Successor Rulers', as the case may be and directing the respondent-Union of India to continue to recognise their personal rights, amenities and privileges as Rulers of their erstwhile States and also continue to pay privy purse to them in addition to their arrears of amounts. For facilitating a proper understanding of the controversy that has led to the filing of these two writ petitions and the Interlocutory Applications 1 to 3 of 1992 in writ petition No. 351 of 1972, a synoptically resume of the case as adumbrated in Writ Petition No. 351/72 with the historical background may be stated:

The petitioner, Shri Raghunathrao Raja was the Co-Ruler of Indian State of Kurundwad Jr. which was prior to 15th August 1947, a sovereign State in treaty relationship with, and under the suzerainty of the British Crown.

2-3. On the commencement of the Indian Independence Act, 1947, British Paramountcy lapsed and the Indian States became completely sovereign and independent. They were free to accede to either of the two Dominions of India or Pakistan or to remain independent. The petitioner's co-Ruler, on behalf of both, executed an instrument of accession under Section 5 of the Government of India Act, 1935, as adopted under the Indian Independence Act, 1947.This instrument was accepted by the Governor General of India and the State thus became a part of the Dominion of India. Likewise, Rulers of most of the other Indian States also

executed similar instruments which were accepted by the Governor General. By the said instrument, the petitioner accepted the matters specified in the schedule thereto as matters with respect to which the Dominion Legislature may make laws for the State and declared his intent that the Governor General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, subject to the terms of the instrument, exercise in relation to the Kurundwad State such functions as may be vested in them by the Government of India Act, 1935 as in force in the Dominion of India on the 15th August, 1947. According to the petitioner, Clause 7 of the Instrument provided that nothing therein shall be deemed to commit the Ruler in anyway to acceptance of any future Constitution of India or to fetter his discretion to enter into agreements with the Government of India under any such future Constitution. Subsequently, a number of Rulers executed Agreements of Merger and transferred the administration of their States to the Dominion Government. The Merger Agreement was in the form given in the 'white Paper on Indian States' and it was executed on the 19th February 1948. Then the administration of the State of the petitioner was handed over on the 8th March 1948.

4. The case of the petitioner is that under the Merger Agreement he was entitled to receive annually from the revenues of the State his privy purse as specified in the Merger Agreement (as amended by an order of Government of India in 1956) free of taxes, besides reserving his personal rights, privileges and dignities.

5. Certain groups of States entered into covenants for the establishment of United States comprising the territories of the covenanting States and Talukas with a common executive, legislature and judiciary. The covenants inter alia provided for the administration of United States by a Rajpramukh aided and advised by a Council of Ministers. They also envisaged the establishment of a Constituent Assembly charged with the duty to frame Constitution for the United States within the framework of covenants and of the Constitution of India. Each of the covenants was concurred in by the Government of India which guaranteed all its provisions including provisions relating to the privy purse, personal privileges etc. etc. However, it was later desired that the Constitution of the United States should also be framed by the Constituent Assembly of India and form part of the Constitution of India. It was decided in consultation with the Government of the United States that the Constitution of India as framed by the Constituent Assembly of India should itself contain all the necessary provisions governing the constitutional structure of the United States as well as the provisions for the guarantee contained in the covenants and the Merger Agreements. In pursuance of this decision the necessary provisions including part VII providing for the Government, legislature, judiciary, etc. of the United States as well as certain separate articles governing other matters, for example, the privy purse and privileges of Rulers bringing them within the framework of the covenants were included in the Constitution of India. Accordingly on 13th October 1949 the Constituent Assembly of India adopted inter alia two Articles-namely, Article 291 relating to payment of privy purse and Article 362 relating to personal rights and privileges of the Rulers. Amendments relating to the United States and other States which had not merged were also adopted and these states were called Part 'B' States. The Rulers and Rajpramukhs of the States agreed to adopt the Constitution as drafted by the Constitution Assembly of India and issued proclamations directing that the Constitution to be adopted by the Constituent Assembly of India shall be the Constitution for the United States. Supplementary covenants were also executed by the covenanting States which covenants were concurred in and guaranteed by the Government of India. Thereafter, the Constituent Assembly passed and adopted the Constitution. According to the petitioner, it was only on the basis of the Constituent Assembly's acceptance of the provisions of Articles 291, 362 and Clause (22) of Article 366 the Rulers adopted the Constitution of India in relation to their States. After the commencement of the Constitution of India and in pursuance of Article 366(22) thereof the petitioner was recognized as the Ruler of the Kurundwad State with effect from 26th January 1950 and had been in the enjoyment of the privy purse, privileges, titles and dignities issued by Merger Agreement and by the Constitution of India. While it was so, the Parliament enacted a new Act-namely, the Constitution (Twenty-Fourth Amendment) Act of 1971, the Constitution (Twenty-Fifth Amendment) Act of 1971 and the Constitution (Twenty-Sixth Amendment) Act of 1971, the last of which received the assent of the President on the 28th December 1971. By this Act Articles 291 and 362 of the Constitution were repelled and a new Article 363-A was inserted, resulting in depriving the Rulers of their

recognition already accorded to them and declaring the abolition of the privy purse and extinguishing their rights and obligation in respect of privy purse and new Clause (22) to Article 366 was substituted. Therefore, the petitioner is now challenging the impugned Amendment Act as unconstitutional and violative of the fundamental rights of the petitioner guaranteed under Articles 14, 19(1)(f), 21 and 31(1) and (2) of the Constitution.

6. In this Writ Petition, I.A. Nos. 1 to 3 of 1992 have been filed by Smt. Kamakshidevi Yavaru, Smt. Vishalakshideviyaru and Smt. Indrakshi Devi, daughters of late Maharaja of Mysore.

7. The petitioner in Writ Petition No. 798/92 is the successor to the late His Highness Sri Jaya Chamaraja Wadiyar, Ruler of Mysore who had ruled the State of Mysore from 8th September, 1940 onwards until 23rd January 1950 when the Treaty/Agreement was made between the Government of India and His Highness the Maharaja of Mysore. This petitioner also challenges the Constitution (26th Amendment) Act of 1971 on the same grounds as in Writ Petition No. 351/72.

8. Of the various grounds, the most notable is whether the impugned Act is beyond the constituent power of Parliament and whether it has altered, destroyed and damaged the basic structure and essential features of the Constitution. The object of the impugned Act whereby the Parliament has omitted Articles 291, 362, inserted Article 363-A and substituted a fresh Clause (22) for the original under Article 366 of the Constitution was to terminate the privy purses and privileges of the former Indian Rulers and to terminate expressly the recognition already granted to them under those two deleted Articles. According to the learned Counsel appearing for the writ petitioners the withdrawal of the guarantees and assurances given under those articles and the abolition of the privy purse, personal rights, privileges and dignities is in violent breach of the power of Parliament acting as a constituent body under Article 368 of the Constitution inasmuch as it not only sought to amend the Constitution but also destroy the basic philosophy, personality, structure and feature of the Constitution.

9. Though it is not necessary to narrate in detail the historical events leading to the transfer of power and the integration of Indian States consequent upon the political and constitutional changes, yet a prefatory note of the past historical background may be stated so as to have a better understanding of the policy step taken for the integration of the States in terms of the consolidation of the Country.

10. Though India is geographically one entity yet throughout its long and past chequered history it never achieved political homogeneity. There were about 554 states (subject to a marginal variation as found in various Reports), out of which the States of Hyderabad and Mysore were left territorially untouched. Two hundred and sixteen states were merged in the adjoining provinces in which they were situated, or to which they were contiguous. Five were taken over individually as Chief Commissioners' provinces under the direct control of the Government of India besides twenty-one Punjab Hill States which comprised Himachal Pradesh. Three hundred and ten were consolidated into six Unions, of which Vindhya Pradesh was subsequently converted into a Chief Commissioner's province. Thus, as a result of integration, in the place of 554 states, fourteen administrative units had emerged. This was a physical or geographical consolidation.

11. The next step was to fit all these units into a common administrative mould. Administration in the erstwhile States was in varying stages of development and, with a few exceptions it was both personal and primitive. Such states being Mysore, Baroda, Travan-core and Cochin could stand comparison with their neighbouring provinces and in some respects were ahead of them. But there were smaller States where, owing mainly to the slenderness of their resources, the rulers were not in a position to discharge even the elementary functions of government. Between these two extremes, there were several States with administrative systems of varying degrees of efficiency.

12. In the past, the comparative Indian area covered by the States was 48 per cent of the total area of the Dominion of India, the relative population ratio of the States was 28 per cent of the total population of the Dominion of India. All the above Indian states formed a separate part of India before their merger with the

rest of India. It is common knowledge that the aim of Government of India Act, 1935 was to associate the Indian states with the British India as equal partners in loose federation. When India became independent by the Indian Independence Act of 1947, British paramountcy in respect of the Indian states lapsed. Therefore, theoretically though the Rulers became independent, in actual fact almost all the Rulers signed Instruments of Accession in August 1947 surrendering Defence, External Affairs and Communications. The Rulers immediately after independence became divided into four classes. All the agreements of merger and covenants provided for the fixation of the Rulers' privy purse which was intended to cover all the expenses of the Rulers and their families including the expenses of their residences, marriages and other expenses etc. Under the terms of the agreements and covenants entered into by the Rulers, privy purses were paid to the Rulers out of the revenues of the States concerned and payments had so far been made accordingly. During the course of the discussion with the Indian States Finances Enquiry Committee, it was urged by most of the States that the liability for paying privy purses of Rulers should be taken over by the center. Having regard to the various factors, it was decided that the payments should constitute a charge on the Central revenues.

13. The privy purses settlements were, therefore, in the nature of consideration for the surrender by the Rulers of all the ruling powers and also for the dissolution of the States as separate units.

14. It is stated that the total amount of the privy purse came to about Rs. 5.8 crores per annum and the quantum of privy purse each year was liable to reduction with every generation. According to V.P. Menon, who was the Constitutional Advisor to the Governor General till 1947 and then the Secretary to the Ministry of States and closely connected with the annexation of the princely states 'the price paid as Privy Purses was not too high for integration and indeed it was insignificant when compared with what the Rulers had lost.' He pointed out that 'the cash balances were to the tune of Rs. 77 crores and that palaces in Delhi alone Were worth several lakhs of rupees.'

15. It is appropriate to refer to the speech of Sardar Vallabhbhai Patel made on 12th October 1949 in the Constituent Assembly on the Draft Constitution, on which reliance was placed by the writ petitioners. The speech reads thus:

There was nothing to compel or induce the Rulers to merge the identity of their States. Any use of force would have not only been against our professed principles but would have also caused serious repercussions. If the Rulers had elected to stay out, they would have continued to draw the heavy civil lists which they were drawing before and in large number of cases they could have continued to enjoy unrestricted use of the State revenues. The minimum which we could offer to them as quid pro quo for parting with their ruling powers was to guarantee to them privy purses and certain privileges on a reasonable and defined basis. The privy purse settlements are therefore in the nature of consideration for the surrender by the Rulers of all their ruling powers and also for the dissolution of the States as separate units. We would do well to remember that the British Government spent enormous amounts in respect of the Mahratta settlements alone. We are ourselves honouring the commitments of the British Government in respect of the persons of those Rulers who helped them in consolidating their empire. Need we cavil then at the small-purposely use the word-small-price we have paid for the bloodless revolution which has affected the destinies of millions of our people.... Let us do justice to them; let us place ourselves in their position and then assess the value of their sacrifice. The Rulers have now discharged their part of the obligations by transferring all ruling powers and by agreeing to the integration of their States. The main part of our obligation under these agreements, is to ensure that the guarantees given by us in respect of privy purse are fully implemented. Our failure to do so would be a breach of faith and seriously prejudice the stabilisation of the new order.

16. The constitutional provisions of Articles 291 and 362 which are now deleted by Section 2 of the impugned Constitution (Twenty-sixth) Amendment Act as they stood, read as follows:

291-Privy purse sums of Rulers

(1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the

commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of India to any Ruler of such State as privy purse-

(a) such sums shall be charged on, and paid out of, the consolidated Fund of India; and

(b) the sums so paid to any Ruler shall be exempt from all taxes on income.

(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part A or Part B of the First Schedule, there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India under Clause (1) and for such period as may, subject to any agreement entered into in that behalf under Clause (1) of Article 278, be determined by order of the President.

362-Rights and privileges of Rulers of Indian States

In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in Clause (1) of Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

17. Clause (22) of Article 366 was amended by Section 4 of the impugned Act of 1971. We shall reproduce that clause as it stood then and the substituted clause (present) consequent upon the amendment.

Unamended clause

'Ruler' in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in Clause (1) of Article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler

Substituted or amended Clause

'Ruler' means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971 was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler.

18. In this connection, the new Article 363-A which has been inserted by Section 3 of the impugned Amendment Act which is also relevant for our purpose may be reproduced:

363-A Recognition granted to Rulers of Indian States to cease and privy purses to be abolished-Notwithstanding anything in this Constitution or in any law for the time being in force-

(a) the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971 was recognised by the President as the Ruler of any Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler.

(b) on and from the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971 privy purse is abolished and all rights, liabilities and obligations in respect of privy purse are extinguished and accordingly the Rulers, or as the case may be, the successor of such Ruler, referred to in Clause (a) or any other person shall not be paid any sum as privy purse.

19. The submissions advanced by Mr. Soli J. Sorabjee, the learned senior counsel appearing on behalf of the writ petitioner in Writ Petition No. 351 of 1972 are thus:

Articles 291, 362 and 366(22) of the Constitution were integral part of the constitutional scheme and formed the important basic structure since the underlying purpose of these Articles was to facilitate stabilisation of the new order and ensure organic unity of India. These Articles guaranteed pledges to the Rulers based on elementary principles of justice and in order to preserve the sanctity of solemn agreements. It was only by the incorporation of these Articles that the unity of India was achieved by getting all the Rulers within the fold of the Constitution, and that the deletion of these Articles has damaged and demolished the very basic structure of the Constitution. The covenants entered into were in the nature of contracts which had been guaranteed constitutionally and affirmed by making the privy purse an expenditure charged under the Consolidated Fund of India and the use of the expressions. 'guaranteed or assured by the Government of the Dominion of India to any Ruler' as embodied in Article 291 and the expression 'guarantee and assurance given under such covenants or agreements as is referred to in Clause (1) of Article 291...' as comprised in Article 362 were a permanent feature of the Constitution reflecting the intention of the founding fathers of the Constitution and as such these two Articles should have been kept intact. According to the learned Counsel, the deletion of these Articles amounted to a gross breach of the principle of political justice enshrined in the preamble by depriving or taking away from the princes the privy purses which were given to them as consideration for surrendering all their sovereign rights and contributing to the unity and integrity of the country and that the deletion of these Articles by the impugned Amendment Act is arbitrary, unreasonable and violative of Article 14 of the Constitution. Further it has been urged that the Rulers acceded to the Dominion of India and executed Instruments of Accession and Covenants in consideration of the pledges arid promises enshrined in Articles 291 and 362 and that the impugned Amendment Act is beyond and outside the scope and ambit of the constitutional power of the Parliament to amend the Constitution as provided under Article 368 of the Constitution.

20-21. Mr. Soli J. Sorabjee, the learned senior counsel in his additional written submissions has further urged that without the co-operation of the Rulers, not only the territory of India, its population, the composition of the State Legislatures, the Lok Sabha and Rajya Sabha but also the Constitution that was adopted on 26th November 1949 would have been basically different and that India i.e. Bharat would have been fundamentally different from the Bharat that came into being.

22. In Writ Petition No. 351 of 1972 in Ground Nos. 38, 39 and 40, it is contended that the Constitution (Twenty-sixth Amendment) Act is unconstitutional, null, void and violative of Articles 14, 19(1)(g), 21, 31(1) and (2) of Constitution.

23. Mr. Harish Salve, the learned senior counsel contended that Articles 291 and 326 when incorporated were intended to grant recognition to the solemn promises on the strength of which the former Rulers agreed to merge with the Indian Dominion and the guarantee of privy purses and certain privileges was as a just quid pro quo for surrendering their sovereignty and dissolving their States. It has been stated that the constitutional guarantees and assurances promising continuance of privy purse as enshrined in the Agreements and Covenants were 'an integral part of the Constitutional Schemes' and 'an important part of the Constitutional structure' and they were to be fully honoured and not cast away on a false morass of public opinion or buried under acts of States, but the impugned Act, ex facie, has abolished and destroyed those constitutional provisions of Articles 291 and 362 affirming the guarantees and assurances given to the Rulers under those agreements. To highlight the significance of those agreements whereby the Rulers were persuaded to sign the instruments, the statement of Shri V.P. Menon who was closely connected with the annexation of the princely States and the speech of Sardar Vallabhbhai Patel made in the Constituent Assembly were cited.

24. It is further emphasised that Sardar Patel also made it clear that according to the vision and views of the Constitution makers, the guarantees of Privy Purse, privileges etc., were perfectly in keeping with the democratic ethos and principle of the Indian people. Then the learned Counsel stated that the views expressed in the Constituent Assembly were unanimously accepted and there was no dissent and that in fact the closing remarks in the debate of Dr. B. Pattabhai Sitaramayya were not only remarkably in confirmatory of

the permanent and indefeasible of the aforesaid guarantees and assurances but also went a long way in determining that the said guarantees and assurances have come to stay as an integral and untouchable part of the basic structure of the Constitution.

25. Finally, it was said that there can be no basic structure of a Constitution divorced from the historical evolution of the precepts and principles on which the Constitution is founded. Any effort to determine the basic structure of the Constitution without keeping a finger on the historical pulse of the Constitution may well lead to substantial injustice. According to him, if the historical approach to the test of basic structure is kept in view, the guarantees and assurances of the privy purses, privileges, etc. granted by the Constitution makers by incorporating Articles 291 and 362 and 366(22) in the Constitution framed by them would, without any doubt or dispute, emerge in their own rights 'as basic features' of the Constitution which cannot be abrogated or annihilated by any Constitutional amendment. What he finally concluded is that the guarantees and assurances of the privy purses, privileges etc. contained in the above three Articles were, in fact, the reflections of the aforesaid virtues of the Constitution makers which are the very virtues which characterized the personality of the Indian Constitution and that the Objects and Reasons of the impugned Amendment clearly establish the mala fide of the Amendment.

26. Mr. A.K. Ganguly, the learned senior counsel appearing in I. A. No. 3 of 1992 in W.P. No. 351 of 1972 pointed out that after the Articles 291 and 362 and 366(22) were adopted by the Constituent Assembly of India on 12th, 13th 14th and 16th October of 1949, Maharaja of Mysore then issued a proclamation on 25th November 1949 to the effect that the Constituent Assembly of Mysore and Maharaja adopted the Constitution of India which would be as passed and adopted by the Constituent Assembly of India. On the following day, namely, 26th November 1949, the Constituent Assembly adopted the Constitution of India. Thereafter, on 23rd January 1950, Maharaja of Mysore executed the Merger Agreement with the Government of India. The learned Counsel after giving a brief history of the Merger of the princely States, stated that the fact that the framers of the Constitution adroitly chose the words 'guarantee or assured' unequivocally conveys the intention of the framers of the Constitution to continue the guarantee as per the covenants in their plain meaning. Learned Counsel submitted that the fact that the expression 'guaranteed' occurring both in Article 32 and Article 291 besides in Article 362 ('guarantee') clearly demonstrates the mind of the Constitution makers that they intended the said provisions of Articles 291 and 362 to be the basic and essential structure of the Constitution. According to him, to preserve the sanctity of these rights, the framers of the Constitution chose to avoid voting in parliament on the amount to be paid as privy purses and keeping that object in their view, they framed Article 291(1) reading 'such sums shall be charged on and paid out of the Consolidated Fund of India and that the said payments would be exempted from all taxes on income'. When such was the sanctity attached to this guarantee, the impugned Amendment completely throwing away those guarantees and assurances to the wind is palpably arbitrary and destructive of the equality clause which is admittedly a basic Constitution.

27. Mr. R.F. Nariman, the learned Counsel appearing in I.A. No. 1 of 1992 in Writ Petition No. 351 of 1972 adopted the arguments of the other counsel and contended that the erstwhile Rulers of the princely States formed a class apart in that there is a real and substantial distinction between them and the citizenry of India. In this context, he referred to Section 87B of the Civil Procedure Code, 1908 which was introduced by way of Amendment after the Constitution came into force in the year 1951 and in order to protect the erstwhile Rulers from frivolous suits filed against them in free India after the Constitution came into force. This, according to learned Counsel, was legislative recognition in addition to the constitutional guarantee contained in Articles 291 and 362 of the fact that the erstwhile princes formed a class apart. When such was the position, according to the learned Counsel, the impugned Amendment which violates the basic structure of the Constitution is unconstitutional. He cited certain decisions in support of his arguments that the Amendment Act is violative of the essential features contained in Articles 14 and 19(1)(f).

28. Mr. D.D. Thakur, the learned senior counsel appearing for the petitioner in Writ Petition No. 798/92 besides adopting the argument advanced in Writ Petition No. 351/72 added that these two Articles were not

at all amendable on the principle of prohibition against impairment of the contract obligations, a principle recognised in Section 10, Article 1 of the Constitution of the United States of America. The same principle is incorporated in the Indian Constitution in the shape of Articles 291 and 362. According to the learned Counsel, the impugned Amendment Act is an ugly epitome of immorality perpetrated by the Indian Parliament, that, too, in the exercise of its constituent powers and the said Amendment Act constitutes an unholy assault on the spirit which is impermissible and that the principle of justice, fairness and reasonableness are beyond the amending powers of the Parliament. He further stated that the equality clause as interpreted by this Court in various decisions is the most important and indispensable feature of the Constitution and destruction thereof will amount to changing the basic structure of the Constitution, and that the authority of the Parliament to amend the Constitution under Article 368 could be exercised only if the Amendment in the Constitution is justifiable and necessitated because of the socio-economic reasons broadly referred to in the directive principles of the State Policy and that any Amendment unrelated to any genuine compulsion amounts to an abuse of the power and is therefore a fraud on the exercise of power itself.

29. The learned Attorney General of India with regard to the above pre-Constitutional agreements stated that the history of the developments leading to the merger agreements and the framing of the Constitution clearly show that it is really the union of the people of the native States with the people of the erstwhile British India and the Instruments of Accession were only the basic documents but not the individual agreements with the Rulers and therefore to attribute the agreements entered into by Rulers as a sacrifice by the Rulers is unfounded. Secondly, the nature of the covenants is not that of a contract because a contract is enforceable at law while these covenants were made nonjusticiable by the Constitution vide Article 363. According to him, the covenants were political in nature and that no legal ingredients as the basis can be read into these agreements and that the guarantees and assurances embodied in Articles 291 and 362 were guarantees for the payment of privy purses. He has urged that such a guarantee can always be revoked in public interest pursuant to fulfilling a policy objective or the directive principles of the Constitution. That being so, the theory of sanctity of contract or unamendability of Article 291 or 362 did not have any foundation. He continues to state that the theory of political justice is also not tenable because political justice means the principle of political equality such as adult suffrage, democratic form of Government etc. In this context, he drew the attention of this Court to a decision in Nawab Usmanali Khan v. Sagarmal : [1965]3SCR201 wherein Bachawat, J. speaking for the Bench has held para 11 of AIR: .the periodical payment of money by the Government to a Ruler of a former Indian State as privy purse on political considerations and under political sanctions and not under a right legally enforceable in any municipal court is strictly to a political pension within the meaning of Section 60(1)(g) of the CPC. The use of the expression 'privy purse' instead of the expression 'pension' is due to historical reasons. The privy purse satisfies all the essential characteristics of a political pension.

Further it has been observed in the above case Para 11 of AIR: .it must be held that the amounts of the privy purse are not liable to attachment or sale in execution of the respondent's decree.

30. Before embarking upon a detailed discussion on the various facets of the contentions-both factual and Legal-we shall deal with the recursive point with regard to the pre-constitutional Instrument of Accession, the Merger Agreement and the covenants which guaranteed the payment of privy purse and the recognition of personal privileges etc. and which agreements ultimately facilitated the integration of these States with the Dominion of India.

31. In 1947, India obtained independence and became a Dominion by reason of the Indian Independence Act of 1947. The suzerainty of the British Crown over the Indian States lapsed at the same time because of Section 7 of that Act. Immediately after, all but few of the Indian States acceded to the new Dominion by executing Instruments of Accession. The Instrument of Accession executed by the Rulers provided for the accession of the States to the Dominion of India on three subjects, namely, (1) Defence, (2) External Affairs, and (3) Communications, their contents being defined in List I of Schedule VII of the Government of India Act, 1935. This accession did not imply any financial liability on the part of the acceding States.

32. This accession of the Indian States to the Dominion of India established a new organic relationship between the States and the Government, the significance of which was the forging of a constitutional link or relationship between the States and the Dominion of India. The accession of the Indian States to the Dominion of India was the first phase of the process of fitting them into the constitutional structure of India. The second phase involved a process of two-fold integration, the consolidation of States into sizeable administrative units, and their demo cratization. Though high walls of political isolation had been raised and buttressed to prevent the infiltration of the urge for freedom and democracy into the Indian States, with the advent of independence, the popular urge in the States for attaining the same measure of freedom as was enjoyed by the people in the Provinces, gained momentum and unleashed strong movements for the transfer of power from the Rulers to the people. On account of various factors working against the machinery for self-sufficient and progressive democratic set-up in the smaller States and the serious threat to law and order in those States, there was an integration of States though not in an uniform pattern in all cases. Firstly, it followed the merger of States in the Provinces geographically contiguous to them. Secondly, there was a conversion of States into Centrally administered areas and thirdly the integration of their territories to create new viable units known as Union of States.

33. Sardar Vallabhbhai Patel had a long discussion with the Rulers and took a very active role in the integration of States. As a result of the application of various merger and integration schemes, (1) 216 States had been merged into Provinces; (2) 61 States had been taken over as Centrally administered areas; and (3) 275 States had been integrated in the Union of States. Thus, totally 552 States were affected by the integration schemes.

34. Reference may be made to (1) the Report of the Joint Select Committee on Indian Constitutional Reforms (1933-34), (2) the Report of the Expert Committee headed by Nalini Ranjan Sarkar, published in December 1947, (3) The Indian States' Finances Enquiry Committee chaired by Sir V.T. Krishnamachari appointed on 22nd October 1948, the recommendations of which, on further discussions with the representatives of the States and Union of States led to the conclusion that the responsibility for payment of the privy purses fixed under various covenants and agreements should be taken over by the Government and (4) the Report of the Rau Committee appointed in November 1948 under the chairmanship of Sir B.N. Rau.

35. Reverting to the cases on hand, Shri Raghunathrao Ganpatrao, the petitioner in Writ Petition No. 351 of 1972 executed a merger agreement as per the form of merger on 19th February 1948 and handed over the administration of the State on 8th March 1948. The petitioner was entitled to receive annually from the revenues of the States his privy purse of Rupees 49,720/- as specified in the Merger Agreement (as amended by an Order of Government of India in 1956) free of taxes besides his personal privileges, rights and the Dominion Government guaranteed the succession according to law and custom of the Gadi of the State and the Raja's personal rights, privileges and dignities.

36. Shri Jaya Chamaraja Wadiyar, father of the petitioner (Sri Srikanta Datta Narasimharaja Wadiyar) in Writ Petition No. 798 of 1992 executed an Instrument of Accession and entered into an Merger Agreement Treaty on 23rd January 1950. Under the Merger Agreement, the Maharaja of Mysore was entitled to receive annually for his privy purse the sum of Rs. 26,00,000 (Rupees twenty-six lakhs) free of all taxes w.e.f. 1st April 1950. Article (1) of the said Agreement contained a proviso that the sum of Rs. 26,00,000/- was payable only to the then Maharaja of Mysore for his lifetime and not to his successor for whom a provision would be made subsequently by the Government of India. Besides, the then Maharaja was entitled to the full ownership, use and enjoyment of all his private properties (as distinct from State properties) belonging to him on the date of the agreement as specified under Clause (1) of Article (2) of the Agreement.

37. We are not concerned about the particulars of the agreements executed by other Rulers of various States.

38. While, it was so, in 1950 when the Constitution was enforced, it conferred upon the Rulers the aforesaid guarantees and assurances to privy purse, privileges etc. under Articles 291 and 362 and 366(22) of the

Constitution. Accordingly, Rulers continued to enjoy the said benefits up to 1970.

39. On 14th May 1970, the Constitution (Twenty-fourth Amendment) Bill, 1970 for abolition of the above said privy purse, privileges etc. conferred under Articles 291 and 362 and 366(22) was introduced in the Lok Sabha by the then Finance Minister, Shri Y.B. Chavan. The Bill contained three clauses and a short statement of Objects and Reasons. The Statement reads thus:

The concept of rulership, with Privy Purses and Special Privileges unrelated to any current functions and social purposes, is incompatible with an egalitarian social order. Government have, therefore, decided to terminate the Privy Purses and Privileges of the Rulers of former Indian States. Hence this Bill.

40. On 2nd September 1970, the Bill was voted upon in the Lok Sabha. But on 5th September 1970, the Rajya Sabha rejected the same since the Bill failed in the Rajya Sabha to reach the requisite majority of not less than two third members present as required by Article 368 and voting. Close on the heels of the said rejection, the President of India purporting to exercise his powers under Clause (22) of Article 366 of the Constitution, signed an Order withdrawing recognition of all the Rulers in the country enmasse. A communication to this effect was sent to all the Rulers in India who have been previously recognised as Rulers.

41. This Presidential Order derecognising the Rulers was questioned in Madhav Rao Jiwaji Rao Scindia v. Union of India : [1971]3SCR9 by filing Writ Petitions under Article 32 of the Constitution challenging it as unconstitutional, ultra vires and void. An eleven-Judges Bench of this Court by its judgment dated 15th December 1970 struck down the Presidential Order being illegal, ultra vires and inoperative on the ground that it had been made in violation of the powers of the President of India under Article 366(22) of the Constitution and declared that the writ petitioners would be entitled to all their pre-existing rights and privileges including right to privy purses as if the impugned orders therein had not been passed. Here, it may be noted that Mitter and Ray, JJ. gave their dissenting judgment.

42. Thereupon, the payment of privy purses to the Rulers was restored. Subsequently, Parliament enacted a new Act entitled the Constitution (Twenty-Fourth Amendment) Act, 1971 on receiving the ratification by the Legislatures of 11 States. It received the assent of the President on 5th November 1971. By this amendment Act, Clause (4) reading 'Nothing in this article shall apply to any amendment of this Constitution made under Article 368' was inserted in Article 13 and Article 368 was re-numbered as Clause (2). The marginal heading to that article was substituted namely 'Power of Parliament to amend the Constitution and procedure therefor' in the place of 'Procedure for amendment of the Constitution'. Before re-numbered Clause (2), Clause (1) was inserted. In the re-numbered Clause (2) for the words 'it shall be presented to the President for his assent upon such assent being given to the Bill', the words 'it shall be presented to the President who shall give his assent to the Bill and thereupon' was substituted. After the renumbered Clause (2), Clause (3) was inserted, namely 'Nothing in article 13 shall apply to any amendment under this article.'

43. It may be recalled that Article 368 was firstly amended by Section 29 of the Constitution (Seventh Amendment) Act, 1956, by omitting the words and letters 'specified in Parts A and B of the First Schedule' and thereafter by Section 3 of the Constitution (Twenty-fourth Amendment) Act, 1971. Again, by Section 55 of the Constitution (Forty-second Amendment) Act, 1976, Clauses (4) and (5) were inserted. But this amendment has been held unconstitutional in Minerva Mills v. Union of India : [1981]1SCR206 holding that Section 55 of the Forty-second Amendment Act inserting Clauses (4) and (5) to Article 368 had transgressed the limits of the amending power of the Parliament which power in Kesavananda Bharati : AIR1973SC1461 was held not to include the power of damaging the basic features of the Constitution or destroying its basic structure.

44. The Constitution (Twenty-fifth Amendment) Act, 1971 by substituting a new clause to Clause (2) of Article 31 and inserting Clause (2B) after Clause (2A) came into force. By the same Amendment Act, Article 31C was inserted after Article 31B entitled 'Saving of laws giving effect to certain directive principles'. It is significant to note that Article 31 was omitted by the Constitution (Fourty fourth Amendment) Act, 1978 w.e.f. 20th June 1979.

45. The impugned Constitution (Twenty-sixth) Amendment, 1971 was passed by the Parliament and it received the assent of the President on 28th December 1971. By this Act, Articles 291 and 362 were omitted and Article 363-A was inserted under the title 'Recognition granted to Rulers of Indian States to cease and privy purses to be abolished'. By the same Amendment Act, an amended new clause was substituted to the then existing Clause (22). We have already reproduced Articles 291 and 362 and the past and present Clause (22) of Article 366.

46. After the impugned Twenty-sixth Amendment was brought into force w.e.f. 28th December 1971, the present writ petition No. 351 of 1972 was filed on 24th August 1972 for declarations that the Twenty-fourth, Twentyfifth and Twenty sixth Amendment Acts of 1971 are unconstitutional, invalid, ultra vires, null and void and that the petitioner continues to be entitled to the privy purse and to personal rights, privileges as a Ruler and for a writ or order directing the respondent to continue to pay privy purse to the petitioner. Another Writ Petition No. 352 of 1972 was filed by H. H. Nawab Mohammed Iftikhar Ali Khan of Malerkotla seeking same relief as in Writ Petition No. 351 of 1972.

47. It may be noted when Writ Petition Nos.351 and 352 challenging the Twenty-fourth, Twentyfifth and Twenty sixth Amendment Acts were filed in this Court, Writ Petition No. 135 of 1970 entitled His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala was pending before this Court.

48. When both these Writ Petitions i.e. W.P. Nos. 351 & 352 of 1972 were listed together, on 28th August 1972, this Court passed the following order:

Upon hearing for the parties, the Court directed issue of Rule Nisi and directed these petitions to be heard along with Writ Petition No. 135 of 1970. Respondents granted time till end of September 1972 to file counter-affidavit to the writ petitions. Notice of the writ petitions shall issue to the Advocates-General of all the States. All the Writ Petitions to be heard on the 23rd October 1972. Written arguments dispensed with.

49. A thirteen-Judges Bench of this Court in Kesavananda Bharati v. State of Kerala : AIR1973SC1461 heard some writ petitions along with these two writ petitions and gave its conclusions thus:

The view by the majority in these writ petitions is as follows:

1. Golak Nath's case : [1967]2SCR762 is overruled;

2. Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution;

3. The Constitution (Twenty-fourth Amendment) Act, 1971 is valid;

4. Section 2(a) and (b) of the Constitution (Twenty-fifth Amendment) Act, 1971 is valid;

5. The first part of Section 3 of the Constitution (Twenty-fifth Amendment) Act 1971 is valid. The second part, namely, 'and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy' is invalid.

6. The Constitution (Twenty-ninth Amendment) Act, 1971 is valid.

The Constitution Bench will determine the validity of the Constitution (Twenty-sixth Amendment) Act, 1971 in accordance with law.

The cases are remitted to the Constitution Bench for disposal in accordance with law. There will be no order as to costs incurred up to this stage.

50. In pursuance of the said Order, Writ Petition No. 351 of 1972 is now before this Constitution Bench for determination of the constitutional validity of the Twenty-sixth Amendment Act in accordance with the law laid down in Kesavananda Bharati : AIR1973SC1461 .

51. Since the constitutional validity of the same Twenty-sixth Amendment Act is involved in Writ Petition No. 798 of 1992, it is also before this Bench along with Writ Petition No. 351 of 1972.

52. As regards the inbuilt separate mechanism for amending the Constitution, Dr. Ambedkar said, 'One can, therefore, safely say that the Indian Federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation.' Dr. Wheare in his modern Constitution has commended that it 'strikes a good balance by protecting the rights of the State while leaving remainder of the Constitution easy to amend.' Our Constitution is amendable one. In fact, till now Seventy-two amendments have been brought about, the first of which being in 1951 i.e. within 15 months of the working of the Constitution.

53. The first amendment was challenged in Shankari Prasad v. Union of India but the Supreme Court unanimously upheld the validity of the Amendment.

54. A brief note as regards the circumstances which necessitated the Twenty-fourth Amendment being brought may be recapitulated.

55. The Constitution Bench of this Court in Sajjan Singh v. State of Rajasthan, : [1965]1SCR933 wherein the constitutional validity of the Constitution (Seventeenth Amendment) Act, 1964 was challenged, reiterated the views expressed in Shankari Prasad by a majority of three Judges although two, Judges gave their separate dissenting judgments one of the dissenting Judges, Hidayatullah, J. stated that the 'Constitution gives so many assurances in Part III that it would be difficult to think that they were the playthings of a special majority.' The other dissenting Judge, Mudholkar, J. took the view that the word 'law' in Article 13 included a constitutional amendment under Article 368 and that, therefore, the Fundamental Rights Part was unalterable. In his view, Article 13 qualified the amending power found in Article 368 making the Fundamental Rights Part of India's Constitution unamenable.

56. The concerns of the two dissenting learned Judges came before an eleven-Judges Bench of this Court in Golak Nath v. State of Punjab : [1967]2SCR762 involving another round of attack on three Amendment Acts, namely, the first, fourth and seventeenth Amendment Acts. This Court by a ratio of six to five held that the Parliament had no power 'to amend any of the provisions of Part III... so as to take away or abridge the fundamental rights enshrined in that Part'. The decision in Golak Nath was rendered in 1967, but one of the amendments it would invalidate dated from 1951, another from 1955 and another from 1964. Therefore, this Court in order to avoid any catastrophe that would have ensued in the social and economic relations, had the Court ruled that the amendments were void abinitio, relied on American cases and adopted the doctrine of prospective overruling which was construed to enable the Court to reverse its prior decisions, to continue the validity of the three amendments in issue, and to declare that after judgment the Indian Parliament would have no power to amend or abridge any of the Fundamental Rights. Therefore, intending to override the ruling in Golak Nath's case, the (Twenty-fourth Amendment) Act, 1971 was brought, as reflected from the Objects and Reasons of the Twenty-fourth Amendment, which read thus:

Objects and Reasons

In the Golak Nath's case : [1967]2SCR762 , the Supreme Court reversed, by a narrow majority, its own earlier decisions upholding the power of Parliament to amend all Parts of the Constitution including Part III relating to fundamental rights. The result of the judgment was that Parliament was considered to have no power to take away or curtail any of the fundamental rights even if it became necessary to do so for the attainment of the objectives set out in the Preamble to the Constitution. The Act, therefore, amends the Constitution to provide expressly the Parliament power to amend any Part of the Constitution.

57. Thereafter, the Twenty-fifth Amendment Act was brought in 1971 which amended the Constitution to surmount the difficulties placed in the way of giving effect to the Directive Principles of State Policy by the interpretation of Article 31 of the Constitution in Rustom Cawasjee Cooper v. Union of India : [1970]3SCR530 .

The said Act substituted Clause (2) and inserted Clause (2B) to Article 31 and added Article 31C. These amendment Acts, namely, twenty-fourth and twenty-fifth besides twenty-ninth amendment Act and the continuing validity of the dictum laid down in Golak Nath's case, : [1967]2SCR762 , were the subjects for decision in Kesavananda Bharati : AIR1973SC1461 . Though Writ Petition No. 351 of 1972 challenging the twenty-fourth, twenty-fifth and twenty-sixth Amendment Act was also listed along with other writ petitions in Kesavananda Bharati, the constitutional validity of the twenty-sixth amendment was left over for determination by a Constitution Bench.

58. We shall now proceed to examine the constitutional validity of the impugned Amendment Act.

59. The question whether Article 291 is a provision related to the Covenants and Agreements entered into between the Rulers of the States and Indian Dominion and is that in reality and substance a provision on the subject matter of covenants and agreements were considered by Hidayatullah, C.J. in his separate concurring judgment in Madhav Rao, : [1971]3SCR9 and they are answered in the following terms para 74 of AIR:

The Article when carefully analysed leads to these conclusion : The main and only purpose of the provision is to charge Privy Purses on the Consolidated Fund of India and make obligatory their payment free of taxes on income. It narrows the guarantee of the Dominion Government from freedom from all taxes to freedom only from taxes on income. Earlier I had occasion to show that the Princes had guaranteed to themselves their Privy Purses free of all taxes. The Dominion Government had guaranteed of assured the same freedom. The Constitution limits the freedom to taxes on income and creates a charge on the Consolidated Fund. There were other guarantees as in the Merger Agreements of Bilaspur and Bhopal (quoted earlier) which are ignored by the Article. The guarantee of the Dominion Government is thus continued in a modified form. The reference to Covenants and Agreements is casual and subsidiary. The immediate and dominant purpose of the provision is to ensure payment of Privy Purses, to charge them on the Consolidated Fund and to make them free of taxes on income.

(Emphasis supplied)

60. Shah, J. speaking for the majority with reference to the covenants and agreements made by the following observation : [1971]3SCR9 , Para 124:

After the Constitution the obligation to pay the privy purse rested upon the Union of India, not because it was inherited from the Dominion of India; but because of the constitutional mandate under Article 291. The source of the obligation was in Article 291, and not in the covenants and the agreements.

(Emphasis supplied)

61. So far as Article 362 is concerned, it has been held by majority of the Judges that the said Article is plainly a provision relating to covenants within the meaning of Article 363 and a claim to enforce the rights, privileges and dignities under the covenants therefore, are barred by the first limb of Article 363 and a claim to enforce the recognition of rights and privileges under Article 362 are barred under the second limb of Article 363 and that the jurisdiction of the Courts however, is not excluded where the relief claimed is founded on a statutory provision enacted to give effect to personal rights under Article 362.

62. The important question now that arises for our consideration is whether the Twenty-sixth Amendment Act, which completely omitted Articles 291 and 362 and inserted a new Article 363A and also substituted a new Clause (22) in place of its original clause of Article 366, has destroyed, damaged and altered the basic structure of the Constitution.

63. The Constitution remains at the apex because it is the Supreme Law. The question is what is the power of the Parliament to amend the Constitution either by abridging or omitting any existing Article or adding any new Article or clause or substituting any new clause for its original clause. To answer this most important question, some supplementary questions have to be examined, those being as to what is the parameter or

the mode by which an amendment can be brought and what are the limitations-either express or implied-on the amending power which inheres in the Constitution itself including its Preamble.

64. Before, we proceed further, let us understand what is meant by an 'amendment'. The word has latin origin amender to amend means to correct. Walter F. Murply in 'Constitutions, Constitutionalism and Democracy' while explaining what 'amendment' means has stated:

Thus an amendment correct errors of commission or omission, modifies the system without fundamentally changing its nature-that, is an amendment operates within the theoretical parameters of the existing Constitution.

65. In our Constitution, the expression 'amendment of the Constitution' is not defined. However, Part XX which contains one Article viz. Article 368 provide a special procedure for amending certain provisions of the Constitution under the heading 'Amendment of the Constitution.'

66. It is not necessary for us to deal with the different provisions of the Constitution and the procedures for amendment as laid down by the Constitution because the authority of the Parliament in bringing about the impugned amendment Act is not under challenge.

67. After the judgment of Madhav Rao Scindia : [1971]3SCR9 , the twenty-sixth amendment was brought to overcome the effect of the judgment. The objects and reasons of the twenty-sixth amendment makes the position clear, which read thus:

The concept of rulership, with privy purses and special privileges unrelated to any current functions and social purposes, was incompatible with an egalitarian social order. Government, therefore, decided to terminate the privy purses and privileges of the Ruler of former Indian States. It was necessary for this purpose, apart from amending the relevant provisions of the Constitution to insert a new article therein so as to terminate expressly the recognition already granted to such Rulers and to abolish privy purses and extinguish all rights, liabilities and obligations in respect of privy purses. Hence this Act.

68. We shall now deal with the dictum laid down in Kesavananda Bharati as regards the power vested in the Parliament and the limitations-either express or implied or inherent therefor to amend the Constitution.

69. In Kesavananda Bharati : AIR1973SC1461 , the Supreme Court upheld the validity of the twenty-fourth Amendment. Of the 13-Judges, Shelat, Hegde, Grover, Jaganmohan Reddy and Mukherjea observed that the Twenty-fourth Amendment did no more than clarify in express language that which was implicit in the unamended Article 368 and it did not and could not add to the power originally conferred thereunder. Ray, J. said that the Twenty-fourth Amendment made explicit what the judgment in Shankari Prasad and the majority judgment in Sajjan Singh : [1965]1SCR933 and the dissenting judgment in Golak Nath : [1967]2SCR762 , said, namely, that Parliament has the constituent power to amend the Constitution. Sikri, C.J. and Ray, Palekar, Khanna, Beg, Dwivedi, JJ. who also held the twenty-fourth Amendment valid, said that under Article 368 Parliament can now amend every article of the Constitution.

70. According to Khanna, J. the non obstante Clause (1) has been inserted in the article to emphasise the fact that the power exercised under that Article is constituent power, not subject to the other provisions of the Constitution and embraces within itself addition, variation and repeal of any provision of the Constitution Mathew, J. put it succinctly stating that the Twenty-fourth Amendment Act did not add anything to the content of Article 368 as it stood before the amendment, that it is declaratory in character except as regards the compulsory nature of the assent of the President to a Bill for amendment. Dwivedi, J. has explicitly stated that except as regard the assent of the President to the Bill, everything else in the twenty-fourth Amendment was already there in the unamended Article 368 and that this amendment is really declaratory in nature and removes doubts cast on the amending power by the majority judgment in Golak Nath : [1967]2SCR762 . Sikri, C.J. elaborating the above theme has observed that the Twenty-fourth Amendment insofar as it transfers

power to amend the Constitution from the residuary entry (Entry 97, List I) or from Article 248 of the Constitution to Article 368 is valid; in other words, Article 368 of the Constitution as now amended by the twenty-fourth Amendment Act deals not only with the procedure for amendment but also confers express power on Parliament to amend the Constitution. He has also further held that under Article 368, Parliament can now amend every article of the Constitution as long as the result is within the limits laid down.

71. Thus the Constitutional questions that arose in Kesavananda Bharati's case : AIR1973SC1461 , were scrupulously and conscientiously examined in detail on varied and varying topics from different angles such as 'the basic elements of the constitutional structure', 'the basic structure of the Constitution', 'the essential and non-essential features of the Constitution', 'the plenary power of amendment' etc. etc. and finally by majority it is laid down that the power of amendment is plenary and it includes within itself the power to add, alter or repeal the various Articles of the Constitution including those relating to fundamental rights, but the power to amend does not include the power to alter the basic structure or framework of the Constitution so as to change its identity. In fact, there are inherent or implied limitations on the power of amendment under Article 368.

72. We shall now examine the various arguments made on behalf of the petitioners and the interveners grouping all those submissions under separate and distinct topics.

73. One of the points urged in common before us is that the framers of the Constitution in their wisdom had thought it fit to incorporate the words 'guaranteed' or 'assured' in Article 291 which by their very plain meaning convey the intention of the framers of the Constitution guaranteeing or promising that the erstwhile Rulers of the States would be entitled to receive their privy purses from the revenues of the Union and that it would be free from all taxes.

74. As we have indicated above there were multiple sequence of events in the historical evolution which necessitated the Indian Rulers to enter into various agreements and ultimately to agree for integration of their States with the Dominion of India by dissolving the separate identity of their States and surrendering their sovereignty but reserving only their rights for privy purses and privileges. Though India was geographically regarded as one entity it was divided in as many as about 554 segments-big and small. On 15th August 1947 the British paramountcy lapsed and India attained its independence. The fact that a heavy price was paid to attain independence and freedom which are sanctified by the blood of many martyrs is unquestionable. During the independence struggle there was popular urge in the Indian States for attaining the freedom which unleashed strong movements for merger and integration of the States with the Dominion of India.

75. The agreements entered into by the Rulers of the States with the Government of India were simple documents relating to the accession and the integration and the 'assurances and guarantees' given under those documents were only for the fixation of the privy purses and the recognition of the privileges. The guarantees and the assurances given under the Constitution were independent of those documents. After the advent of the Constitution, the Rulers enjoyed their right to privy purses, private properties and privileges only by the force of the Constitution and in other respects they were only ordinary citizens of India like any other citizen, of course, this is an accident of history and with the concurrence of the Indian people in their Constituent Assembly.

76. Therefore, there cannot be any justification in saying that the guarantees and assurances given to the Rulers were sacrosanct and the Articles 291 and 362 reflected only the terms of the agreements and covenants. In fact as soon as the Constitution came into force, the Memoranda of Agreements executed and ratified by the States and Union of States were embodied in formal agreements under the relevant Articles of the Constitution and no obligation flowed from those agreements and covenants but only from the constitutional provisions. To say differently, after the introduction of Articles 291 and 362 in the Constitution, the agreements and covenants have no existence at all. The reference to Covenants and Agreements was

casual and subsidiary and the source of obligation flowed only from the Constitution. Therefore, the contention urged on the use of the words 'guaranteed' or 'assured' is without any force and absolutely untenable.

77. The next vital issue is whether the impugned Amendment Act has damaged any basic structure or essential feature of the Constitution.

78. According to Mr. Soli J. Sorabjee, by the repeal of Articles 291 and 362 which were integral part of the constitutional scheme, the identity of the Constitution has been changed and its character has been fundamentally altered. The total repeal of these Articles coupled with an express repudiation of the guarantees embodied therein has resulted in nullification of 'a just quid pro quo' which were the essence of these guarantees. He has urged that the underlying purpose of doing justice to the Rulers has been subverted and breach of faith has been sanctioned. He based the above arguments on three decisions of this Court, namely, (1) Waman Rao v. Union of India : AIR1981SC271 ; (2) Maharao Sahib Shri Bhim Singhji v. Union of India : AIR1981SC234 and (3) Madhav Rao v. Union of India : [1971]3SCR9 :

79. There has been a common recurrent argument that the impugned Amendment Act is beyond the constituent power of the Parliament since it has damaged the basic structure and essential features of the Constitution.

80. Mr. D.D. Thakur in addition to the above has stated that one of the tests to determine whether the provision of the Constitution was intended to be permanent or could be deleted or amended is to see whether the Constitution makers had intended that to be permanent. In support of his submission, he placed much reliance on the observation of Mudholkar, J. in Sajjan Singh v. State of Rajasthan : [1965]1SCR933 reading thus:

Above all, it formulated a solemn and dignified preamble which appears to be an epitome of the basic features of the Constitution. Can it not be said that these are indicia of the intention of the Constituent Assembly to give a permanency to the basic features of the Constitution.

81. This observation has been reiterated in a separate judgment of Hegde and Mukherjea, JJ. in Kesavananda Bharati : AIR1973SC1461 stating that it was Mudholkar, J. who did foresee the importance of the question whether there is any implied limitation on the amending power under Article 368 of the Constitution. On the basis of the above, he has urged that if the intention of the founding fathers regarding the permanence or impermanence of a provision of the Constitution is conclusive for determining whether a provision is basic or not, there is no difficulty in gathering the intention of the founding fathers from Article 362 itself. He continues to state that the fact that the 'assurances and guarantees' had been insulated against every future constituent inroad or legislative incursion of Parliamentary control is further substantiated from the provisions of Article 291 of the Constitution.

82. Mr. A.K. Ganguly has adopted the above arguments and supplemented the same stating that the privileges of the Rulers of the State were made an integral part of the constitutional scheme and that thereby a class of citizens are for historical reasons accorded special privileges and that the recognition of the status, rights and privileges conferred on the Rulers were not on temporary basis and as such they are not liable to be varied or repudiated.

Mr. Nariman also emphasised the same.

83. Before adverting to the above the contentions, we state in brief about basic principle to be kept in view while amending a Constitution.

84. In our democratic system, the Constitution is the supreme law of the land and all organs of the Government executive, legislative and judiciary derive their powers and authority from the Constitution. A distinctive feature of our Constitution is its unamendability.

85. The Courts are entrusted with important constitutional responsibilities of upholding the supremacy of the Constitution. An amendment of a Constitution becomes ultra vires if the same contravenes or transgresses the limitations put on the amending power because there is no touchstone outside the Constitution by which the validity of the exercise of the said powers conferred by it can be tested.

86. In our Constitution, there are specific provisions for amending the Constitution. The amendments had to be made only under and by the authority of the Constitution strictly following the modes prescribed, of course subject to the limitations either inherent or implied. The said power cannot be limited by any vague doctrine of repugnancy. There are many outstanding interpretative decisions delineating the limitations so that the constitutional fabric may not be impaired or damaged. The amendment which is a change or alteration is only for the purpose of making the Constitution more perfect, effective and meaningful. But at the same time, one should keep guard over the process of amending any provision of the Constitution so that it does not result in abrogation or destruction of its basic structure or loss of its original identity and character and render the Constitution unworkable. The Court is not concerned with the wisdom behind or propriety of the constitutional amendment because these are the matters for those to consider who are vested with the authority to make the constitutional amendment. All that the Court is concerned with are (1) whether the procedure prescribed by Article 368 is strictly complied with? and (2) whether the amendment has destroyed or damaged the basic structure or the essential features of the Constitution.

87. If an amendment transgresses its limits and impairs or alters the basic structure or essential features of the Constitution then the Court has power to undo that amendment. The doctrine of basic structure was originated in Sajjan Singh : [1965]1SCR933 and has been thereafter developed by this Court in a line of cases, namely, (1) Kesavananda Bharati : AIR1973SC1461 (supra) (2) Indira Nehru Gandhi : [1976]2SCR347 , (3) Minerva Mills : [1981]1SCR206 , (4) Waman Rao : AIR1981SC271 and (5) Sanjeev Coke . : [1983]1SCR1000 .

88. Mr. Soli J. Sorabjee in support of his contention that Articles 291 and 362 and Clause (22) of Article 366 were integral part of the constitutional scheme which otherwise would mean the 'essential part of the constitutional scheme', referred to Webster New International Dictionary, 3rd Edition and Collins Concise English Dictionary, and has pointed out the lexical meaning say, that 'integral' means 'essential' and, therefore, according to him, the total abolition of the provisions of the Constitution which are its integral parts-otherwise essential parts-has damaged the essential and basic features of the Constitution. To draw strength for his submission, he relied upon certain observations made by Shah, J. in his judgment in Madhav Rao, : [1971]3SCR9 , observing, 'By the provisions enacted in Articles 366(22), 291 and 362 of the Constitution the privileges of Rulers are made an integral part of the constitutional scheme' and 'An order merely 'derecognising' a Ruler without providing for continuation of the institution of Rulership which is an integral part of the constitutional scheme is, therefore, plainlyillegal.'

(Emphasis supplied)

89. The learned Attorney General has vehemently opposed the above submission stating that the expression 'integral part of the scheme of the Constitution' used in Madhav Rao are not the same as the basic structure and that expression has to be read in the context of a challenge to the Ordinance which sought to render nugatory certain rights guaranteed in the Constitution, then existing. It is further stated that the attack on the Twenty-sixth Amendment based on the principles laid down in Madhav Rao is totally misconceived because only in order to overcome the effect of that judgment, the Twenty-sixth Amendment was passed by the Parliament in exercise of its constituent powers. According to the Attorney General, the observations in the said case were nullified by the Amendment and that judgment is no longer good law after the Amendment. To test the Amendment on the basis of that judgment is impermissible and all the arguments based upon this case are, therefore, misconceived.

90. In this content, it becomes necessary to recall certain events which ultimately gave rise to Madhav Rao's case : [1971]3SCR9 .

91. After the commencement of the Constitution, in pursuance of Article 366(22), the Rulers were recognised and they had been enjoying the privy purses, privileges, dignities etc. on the basis of the relevant constitutional provisions. Pursuant to the resolution passed by the All India Congress Committee in 1967, the Union of India introduced the Twenty-fourth Amendment Bill in 1970 to implement the decision of the All India Congress Committee favouring removal of privy purses, privileges etc. But the Bill though passed in the Lok Sabha failed to secure the requisite majority in the Rajya Sabha and thereby it lapsed. It was only thereafter, the President of India issued an Order in exercise of the powers vested in him under Article 366(22) derecognising the Rulers and stopping the privy purses, privileges etc. enjoyed by the Rulers. This Order passed by the President was the subject matter of challenge in Madhav Rao, : [1971]3SCR9 . The Supreme Court struck down the Order of the President as invalid as in view of the Court derecognition of the Rulers would not take away right to privy purses when Articles 291 and 362 were in the Constitution. It was only in that context, the observations which have been relied upon by Mr. Soli J. Sorabjee, were made. The Twenty-sixth Amendment itself was passed by Parliament to overcome the effect of this judgment. Now by this Amendment, Articles 291 and 362 are omitted, Article 363A is inserted and Clause (22) of Article 366 is amended. Therefore, one cannot be allowed to say that the above said omitted Articles and unamended clause were essential part of the constitutional scheme. So they have to be read only in the context of a challenge made to the Presidential Order which sought to render nugatory certain rights guaranteed in the Constitution which were then existing. In any event, the constitutional bar of Article 362 denudes the jurisdiction of any Court in disputes arising from covenants and treaties executed by the Rulers. The Statement of Objects and Reasons of Twenty-sixth Amendment clearly points out that the retention of the above Articles and continuation of the privileges and privy purses would be incompatible with the egalitarian society assured in the Constitution and, therefore, in order to remove the concept of rulership and terminate the recognition granted to Rulers and abolish the privy purses, this Amendment was brought on being felt necessary.

92. We are of the opinion that the observations of Shah, J. in Madhav Rao : [1971]3SCR9 , that 'the privileges of Rulers are made an integral part of the constitutional scheme' and that 'institution of Rulership is an integral part of the constitutional scheme', must be read in their proper context. That was a case, where by a Presidential order, the Rulers were deprived of their privy purses and other privileges while keeping Articles 291 and 362 intact in the Constitution. Indeed, the said Presidential order was issued after the Government failed in its attempt to effect an amendment on those lines. It is in that connection that the learned Judge made the above observations. It is clear that the learned Judge used the words 'integral part' in their ordinary connotation-not in any lexicographical sense. Ordinarily speaking, 'integral' means 'of a whole or necessary to the completeness of a whole' and as 'forming a whole' (Concise Oxford Dictionary). Our Constitution is. not a disjointed document. It incorporates a particular socio-economic and political philosophy. It is an integral whole. Every provision of it is an integral part of it-even the provisions contained in Part XXI 'Temporary, Transitional and Special Provisions'. One may ask which provision which concept or which 'institution' in the Constitution is not an integral part of the Constitution? He will not find an answer. To say that a particular provision or a particular 'institution' or concept is an integral part of the Constitution is not to say that it is an essential feature of the Constitution. Both are totally distinct and qualitatively different concepts. The said argument is really born of an attempt to read a judgment as a statute. One may tend to miss the true meaning of a decision by doing so. We may say, the aforesaid observations of Shah, J. constituted the sheet-anchor of the petitioners' argument relating to basic structure.

93. In the above premise, it is not permissible to test the Twenty-sixth Amendment with reference to the observations made in Madhav Rao : [1971]3SCR9 .

94. We shall now dispose of the contention raised in the grounds of the Writ Petition No. 351 of 1972 that the impugned Amendment is violative of Articles 14, 19(1)(f) and (g), 21, 31(1) and (2) of the Constitution. Evidently this contention has been raised in the year in 1972, that is long before the Constitution (Forty-fourth Amendment) Act of 1978 was passed w.e.f. 26th June 1979. Writ Petition No. 798 of 1992 has been fifed on

October, 15, 1992 in which the ground with reference to Articles 19(1)(f) and 31 are left out. It is to be stated that Articles 19(1)(f) and 31 are completely omitted by the Forty-fourth Amendment. By the deletion of these Articles by Forty-fourth Amendment, the status of 'right to property' from that of a fundamental right is reduced to a legal right under Article 300A which reads 'No person shall be deprived of his property save by authority of law'. However, in order to allay the fears of the minorities in respect of that right guaranteed in the then Article 31, Article 30(1A) has been inserted by the Forty-fourth Amendment.

95. The right to property even as a fundamental right was not a part of the basic structure and even assuming that the right to privy purse is a property, it is a right capable of being extinguished by authority of law vide Article 300A. Needless to emphasise, according to the rules laid down in Kesavananda Bharati : AIR1973SC1461 , that even the fundamental right can be amended or altered provided the basic structure of the Constitution in any way is not damaged.

96. Permanent retention of the privy purse and the privileges of rights would be incompatible with the sovereign and republican form of Government. Such a retention will also be incompatible with the egalitarian form of our Constitution. That is the opinion of the Parliament which acted to repeal the aforesaid provisions in exercise of its constituent power. The repudiation of the right to privy purse privileges, dignities etc. by the deletion of Articles 291 and 362, insertion of Article 363A and amendment of Clause 22 of Article 366 by which the recognition of the Rulers and payment of privy purse are withdrawn cannot be said to have offended Article 14 or 19(g) and we do not find any logic in such a submission. No principle of justice, either economic, political or social is violated by the Twenty-sixth Amendment. Political justice relates to the principle of rights of the people, i.e. right to universal suffrage, right to democratic form of Government and right to participation in political affairs. Economic justice is enshrined in Article 39 of the Constitution. Social justice is enshrined in Article 38. Both are in the Directive Principles of the Constitution. None of these rights are abridged or modified by this Amendment. We feel that this contention need not detain us any more and, therefore, we shall pass on to the next point in debate.

97. A serious argument has been advanced that the privy purse was a just quid pro quo to the Rulers of the Indian States for surrendering their sovereignty and rights over their territories and that move for integration began on a positive promising note but it soon de-generated into a game of manoeuvre presumably as a deceptive plan or action. This argument based on the ground of breaking of solemn pledges and breach of promise cannot stand much scrutiny. To say that without voluntary accession, India i.e. Bharat would be fundamentally different from that Bharat that came into being prior to the accession is untenable much less inconceivable. We have already dealt with the necessity of the Rulers to accede for the integration of States with the Dominion of India in the earlier part of this judgment and, therefore, it is quite unnecessary to reiterate in this context, except saying that the integration could have been achieved even otherwise. One should not lose sight of the fact that neither because of their antipathy towards the Rulers nor due to any xenophobia, did the Indian Government entertain the idea of integration but because of the will of the people. It was the people of the States who were basically instrumental in the integration of India. It would be apposite to refer to the observation of Bose, J. in Virendra Singh v. State of U.P. : [1955]1SCR415 . The said observation reads as follows:

Every vestige of sovereignty was abandoned by the Dominion of India and by the States and surrendered to the peoples of the land who through their representatives in the Constituent Assembly hammered out for themselves a new Constitution in which all were citizens in a new order having but one tie, and owing but one allegiance : devotion, loyalty, fidelity to the Sovereign Democratic Republic that is India.

98. It is also worthwhile to take note of the historical process of States integration which is well set out in Chapter 18 under the heading Indian States in 'The Framing of Constitution-A Study by B. Shiva Rao. A perusal of that chapter indicates that the attitude of the princes towards joining a united India was one of resistance, reluctance and high bargain, and it was the peoples of the States who forced them to accede to the new united India. To say in other words, the States were free but not stable because of the stress and strain they

underwent both from inside and outside. Though the process of integration and democratisation called as 'unionization' in the words of Sardar Patel was undertaken step by step at various stages, multiple forces, such as political, economic and geographic, more so the democratic movement within the States accelerated the process of integration. Therefore, it is a misnomer to say that the Rulers made their sacrifices for which they were given just compensation and assured permanent payment of privy purses. What was given to the Rulers was a political pension as rightly pointed out in Usman Ali's case : [1965]3SCR201 , on consideration of their past position. Hence there is no question of breaking of solemn pledges or breach of promises etc. given to the Rulers. Therefore, the repudiation of the same cannot be said to have amounted to any breach of those guarantees and promises resulting in alteration of the basic structure of the Constitution.

99. Mr. D.D. Thakur has submitted that the Twenty-sixth Amendment is an ugly epitome of immorality perpetrated by the Indian Parliament, that too in the exercise of its constituent powers and that the justice, fairness and reasonableness is the soul, spirit and the conscience of the Constitution of India as framed originally and that the impugned Amendment Act constitutes an unholy assault on that spirit which is impermissible and beyond the amending powers of the Parliament under Article 368 of the Constitution. According to him, the equality clause as interpreted by this Court in (1) Maneka Gandhi v. Union of India : [1978]2SCR621 , (2) R. D. Shetty v. International Airport Authority of India : (1979)IILLJ217SC , (3) Kasturi Lal Lakshmi Reddy v. State of Uttar Pradesh : [1987]1SCR86 , (4)E. P. Royappa v. State of Tamil Nadu : (1974)ILLJ172SC , (5) Indira Gandhi's case : [1976]2SCR347 and (6) Minerva Mills's case : [1981]1SCR206 (supra), is the most important indispensable feature of the Constitution and destruction thereof will amount to changing the basic structure of the Constitution.

100. Mr. Harish Salve in addition to the above, urged that the basic structure test is to be applied on the touchstone of the Constitution as it stood while being delivered at the hands of the Constitution makers and that it would be contrary to the very principle of the basic structure to apply any personal notion or ideological predilections while determining the 'personality test' of the original Constitution. Further he states that the identity of the Constitution has been lost on account of the impugned Amendment.

101. As regards the submission that the amendment is an ugly epitome of immorality perpetrated by the Indian Parliament, it has been seriously opposed by the learned Attorney General that this argument based on immorality has only to be stated to be rejected and that it is an elementary principle of jurisprudence that a law cannot be interpreted on the basis of moral principles. In this connection, reference may be made to the following passage in Dias's Jurisprudence, Fifth Edition, at pages 355 and 356. It reads thus:

As a positivist, Prof. Hart excludes morality from the concept of law, for he says that the positivists are concerned to promote

'clarity and honesty in the formulation of the theoretical and moral issues raised by the existence of particular laws which were morally iniquitous but were enacted in proper form, clear in meaning, and satisfied all the acknowledged criteria of validity of a system. Their view was that, in thinking about such laws, both the theorist and the unfortunate official or private citizen who was called on to apply or obey them, could only be confused by an invitation to refuse the title of 'law' or 'valid' to them. They thought that, to confront these problems, simpler, more candid resources were available, which would bring into focus far better, every relevant intellectual and moral consideration : we should say, 'This is law; but it is too iniquitous to be applied or obeyed.

It was pointed out at the beginning of this chapter that the principal call for a positivist concept of law is to identify laws precisely for the practical purposes of the present and that, for the limited purpose, it is desirable to separate the 'is' from the 'ought'. To accomplish this no more would appear to be needed than simply those uses of the word 'law' by Courts; which is akin to Salmond's definition alluded to above. Professor Hart's concept, however, is of 'legal system', which is a continuing phenomenon. ..

When Professor Hart thinks in a continuum, as he does with society, he has to bring in morality; but in order

to defend positivism he shifts ground and takes refuge in the present time frame, for only in this way can he justify the exclusion of morality for the purpose of identifying laws here and now. There would thus appear to be a greater separation between his concept of law and his positivism than ever he alleges between law and morality. For the limited purpose of identifying 'laws' his concept seeks to accomplish more than is necessary; for the purpose of portraying law in a continuum it does not go far enough.

102. Bentham in his Theory of Legislation, Chapter XII at page 60 said thus:

Morality in general is the art of directing the actions of men in such a way as to produce the greatest possible sum of good. Legislation ought to have precisely the same object. But although these two arts, or rather sciences, have the same end, they differ greatly in extent. All actions, whether public or private, fall under the jurisdiction of morals. It is a guide which leads the individual, as it were, by the hand through all the details of his life, all his relations with his fellows. Legislation cannot do this; and, if it could, it ought not to exercise a continual interference and dictation over the conduct of men. Morality commands each individual to do all that is advantageous to the community, his own personal advantage included. But there are many acts useful to the community which legislation ought not to command. There are also many injurious actions which it ought not to forbid, although morality does so. In a word legislation has the same center with morals, but it has not the same circumference.

Reference may also be made to Krishna Kumar v. Union of India : (1991)ILLJ191SC .

103. The above passages remind us of the distinction between law and morality and the line of demarcation which separate morals from legislation. The sum and substance of it is that a moral obligation cannot be converted into a legal obligation.

104. In the light of the above principle, the Attorney General is right in saying that Courts are seldom concerned with the morality which is the concern of the law makers.

105. According to him there is no unreasonableness, unfairness and dishonesty in bringing this amendment in any way injuring the basic feature of the Constitution and this amendment has not caused any damage to the concept of reasonableness and non-arbitrariness pervading the entire Constitutional scheme.

106. On a deep consideration of the entire scheme and content of the Constitution, we do not see any force in the above submissions. In the present case, there is no question of 'change of identity on account of the Twenty-sixth Amendment. The removal of Articles 291 and 362 has not made any change in the personality of the Constitution either in its scheme nor in its basic features, nor in its basic form nor in its character. The question of identity will arise only when there is a Change in the form, character and content of the Constitution. In fact, in the present case, the identity of the Constitution even on the tests proposed by the counsel of the writ petitioners and interveners, remains the same and unchanged.

107. Mr. R.F. Nariman has contended that by removing the 'real and substantial' distinction between the erstwhile Princes forming a class and the rest of the citizenry of India the Constitutional amendment has at one stroke violated the basic structure of the Constitution as reflected both in Article 14 and 51(c) and treated unequals as equals thereby giving a go-by to a solemn treaty obligation which was sanctified as independent Constitutional guarantee. He has drawn strength in support of his above argument from the decisions in Md. Usman v. State of Andhra Pradesh 1971 (Supp) SCR 549 and Ramesh Prasad Singh v. State of Bihar : (1978)ILLJ197SC .

108. After carefully going through the above decisions which relate to service matters, we are afraid that such an argument as one made by Mr. Nariman could be substantiated on the principles laid down in these two decisions that Article 14 will be violated if unequals are treated as equals. In our considered opinion this argument is misconceived and has no relevance to the facts of the present case. One of the objectives of the Preamble of our Constitution is 'fraternity assuring the dignity of the individual and the unity and integrity of

the nation. It will be relevant to cite the explanation given by Dr. Ambedkar for the word 'fraternity' explaining that 'fraternity means a sense of common brotherhood of all Indians'. In a country like ours with so many disruptive forces of regionalism, communalism and linguism, it is necessary to emphasise and reemphasizethat the unity and integrity of India can be preserved only by a spirit of brotherhood. India has one common citizenship and every citizen should feel that he is Indian first irrespective of other basis. In this view, any measure at bringing about equality should be welcome. There is no legitimacy in the argument in favour of continuance of princely privileges. Since we have held that abolition of privy purses is not violative of Article 14, it is unnecessary for us to deal with the cases, cited by Mr. Nariman, which according to him go to say that any law violating Article 14 is equally violative of the basic structure of the Constitution, inasmuch as Article 14 is held to be a basic postulate of the Constitution.

109. One of the arguments advanced by Mr. D.D. Thakur is that the Constitution should be read in the context of the pluralistic society of India where there are several distinct and differing interests brought together and harmonised by the Constitution makers by assuring each section, class and society, preservation of certain political, cultural and social features specific to that class or section. By way of example, reference to Article 370 which confers a special status for Jammu and Kashmir, is made. He continues to state that likewise in the Northeaster States, the tribals were given autonomous powers for their District Councils co-equal to what is conferred on the States and that for minorities, special provisions are made under Article 30. Besides Articles 25 and 26 are meant to safeguard the minorities and religious denominations. The persons to determine the injury will be those for whom these provisions were made and whose interests are prejudiced. In such a circumstance, Articles 291 and 362 which are the magna carta assuring the rulers of their pre-existing rights cannot in any way destroy. We do not think that the aforesaid special provisions have any relevance herein.

110. As repeatedly pointed out supra, the only question is whether there is any change in the basic structure of the Constitution by deletion of Articles 291 and 362 and by insertion of Article 363A and amendment of Clause (22) of Article 366. We have already answered this question in the negative observing that the basic structure or the essential features of the Constitution is/are in no way changed or altered by the impugned Amendment Act. We cannot make surmises on 'ifs' and 'buts' and arrive to any conclusion that Articles 291 and 362 should have been kept intact as special provisions made for minorities in the Constitution. It is but a step in the historical evolution to achieve fraternity and unity of the nation transcending all the regional, linguistic, religious and other diversities which are the bed-rock on which the constitutional fabric has been raised. The distinction between the erstwhile Rulers and the citizenry of India has to be put an end to so as to have a common brotherhood.

111. On a careful consideration of the various aspects of both the writ petitions, we hold that the Constitution (Twenty-sixth Amendment) Act of 1971 is valid in its entirety.

112. For all the aforementioned reasons, both the Writ Petitions as well as the connected I.As are dismissed. No costs.

113. It has been brought to our notice that a number of writ petitions are pending before the Karnataka High Court touching the matter in question raising various other questions. Since we have now upheld the validity of the Twenty-sixth Amendment Act, the High Court may proceed to dispose of all those pending writ petitions with reference to other issues, if any arising, in accordance with law and in the light of this judgment upholding the Constitutional validity of the impugned Amendment Act.

S. Mohan, J.

114. I have had the advantage of perusing the judgment of my learned Brother Ratnavel Pandian, J. Though 1 am in respectful agreement with him having regard to the importance of the constitutional issues involved in this case, I would like to add the following:

It was on the 15th day of August, 1947 when India attained freedom. Pandit Jawahar Lal Nehru said in

memorable words:

When the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends and when the soul of a nation long suppressed, finds utterance.

115. With the advent of freedom, India had to face problems of highest magnitude. Of the many problems three were most pressing and urgent. The earlier they were resolved, the better it was for the country. The first of them was to restore the communal harmony which had been impaired to a great extent (ii) Princely States had to be integrated into the Indian Union, (iii) There was necessity to frame a republican Constitution which would vibrate the new ideas.

116. With the dawn of independence it was felt that in an independent India the existence of princely states was an anachronism in the body politic. Neither the past history nor economic and administrative realities could justify the existence of a multitude of autonomous islands. They had to be integrated with the rest of Indian Union to forge the unity of the country. After the withdrawal of British power the paramountcy lapsed to the princes. They could decide either to join India or Pakistan or even to stay independent. Sardar Vallabhbhai Patel, the architect of Indian unity and the master builder of destiny of nationalist India brought the princely States into the Indian Union by means of judicious threats of force, appeals to patriotism, warnings of anarchy and diplomatic persuasion. An invitation was extended to all the rulers of the State to work through the Councils of Constituent Assembly for the common good of all.

117. This invitation was accepted on 19-5-1949. On this the White Paper says at page 109:

As the States came closer to the center it became clear that the idea of separate Constitutions being framed for different constituent units of the Indian Union was a legacy from the Rulers' polity which, could have no place in a democratic set up. The matter was, therefore, further discussed by the Ministry of States with the Premiers of Unions and States on May 19, 1949 and it was decided, with their concurrence, that the Constitution of the States should also be framed by the Constituent Assembly of India and should form part of the Constitution of India.

118. It may not be correct to state that those who set down together in the Constituent Assembly and those who sent their representatives there, as conqueror and conquered, as those who ceded and as those who absorbed, as sovereigns or their plenipotentiaries contracting alliances and entering into treaties as high contacting parties to an act of State. They were not there as sovereign subject, or as citizen and alien. On the contrary, they were the sovereign peoples of India, free democratic equals, forging the pattern of a new life for the common weal moving with a spirit all times.

119. When India became a Dominion every vestige of sovereignty was abandoned, equally so, by the States. They all surrendered to the peoples of the land who through their representatives in the Constituent Assembly hammered out for themselves a new Constitution in which all were citizens, in a new order having but one tie, and owing but one allegiance, devotion, loyalty, fidelity, to the Sovereign Democratic Republic that is India as was eloquently stated by Justice Bose in Virendra Singh v. State of Uttar Pradesh : [1955]1SCR415 :

At one stroke all other territorial allegiances were wiped out and the past was obliterated except where expressly preserved; at one moment of time the new order was born with its new allegiance springing from the same source for all, grounded on the same basis; the sovereign will of the peoples of India with no class, no caste, no race, no creed, no distinction....

120. The will of the Union Government was clearly expressed in its White Paper:

At page 115 it is said:

With the inauguration of the new Constitution the merged States have lost all vestiges of existence as separate entities; and at page 130:

The new Constitution of India gives expression to the changed conception of Indian unity brought about by...the 'unionisation of States....and at page 131: Unlike the scheme of 1935 the new Constitution is not an alliance between democracies and dynasties but a real union of the Indian people built on the concept of the sovereignty of the people.... All the citizens of India, whether residing in States or Provinces, will enjoy the same fundamental rights and the same legal remedies to enforce them. In the matter of their constitutional relationship with the center and in their internal set up, the States will be on a par with the Provinces. The new Constitution therefore finally eradicates all artificial barriers which separated the States from Provinces and achieves for the first time the objective of a strong, united and democratic India built on the true foundations of a cooperative enterprise on the part of the peoples of the Provinces and the States alike.

121. The princes were first stripped of their three vital functions, defence, foreign affairs and communications. They were then urged to transfer internal government to popular movements inside the respective States. In recompense they were allowed to retain their titles, dignities and immunities and were given generous privy purses. It was in this context Articles 291 and 362 were brought into the Constitution.

Likewise, Article 366(22) defined the 'Ruler'.

122. On 2nd September, 1970, a Bill (Twenty-fourth Amendment Bill, 1970) was introduced omitting these articles. Though it was passed in the Lok Sabha it could not obtain the requisite majority of two-thirds of the members present in voting in the Rajya Sabha. Therefore, the motion for introduction of the Bill was declared lost. Immediately thereafter the President of India in exercise of his power under Clause (22) of Article 366 of the Constitution signed an instrument withdrawing recognition of all the Rulers. Thereupon, the order was challenged in this Court under Article 32 of the Constitution of India. In Madhav Rao Jiwaji Rao Scindia v. Union of India : [1971]3SCR9 , it was held that the order of the President derecognising the Rulers was ultra vires and illegal. (In the later part of this judgment the ratio of this ruling will be discussed in detail). In order to render this ruling ineffective the Twenty-sixth Amendment to the Constitution was introduced. The following tabulated statement will bring out the legal position as is obtainable after Twenty-sixth Amendment:

Articles before Articles after 26th Amendment 26th Amendment Article 291 : 291. (Privy purse sums of Where under any covenant or Rulers) Rep. by the Constitution agreement entered into by the (Twenty-sixth Amendment) Act, 1971, Ruler of any Indian State before Section 2. the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy purse- (a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and (b)the sums so paid to any Ruler shall be exempt from all taxes on income. Article 362 : 362. (Rights and privileges of In exercise of the power of Parliament Rulers of Indian States.) Rep. by or of the Legislature of a State to the Constitution (Twenty-sixth make laws or in the exercise of the Amendment) Act, 1971, Section 2. executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreeable as is referred in Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State. 363-A. Recognition granted to Rulers of Indian States to cease and privy purses to be abolished-Notwithstanding anything in this Constitution or in any law for the time being (a) the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler; (b) on and from the commencement of the Constitution (Twenty-sixth Amendment) the Act, 1971, privy purse is abolished and all rights, liabilities and obligations in respect of privy purse are extinguished and accordingly the Ruler or, as the case may be, the successor of such Ruler, referred to in Clause (a) or any other person shall not be paid any sum as privy purse. Article 362(22) : 'Ruler' means the Prince, Chief or other 'Ruler' in relation to an Indian person who, at any time before the State

means the Prince, Chief or commencement of the Constitution (Twenty- other person by whom any such covenant sixth Amendment) Act, 1971, was or agreement as is referred to in recognised by the President as the Ruler Clause (1) of Article 291 was entered of an Indian State or any person who, at into and who for the time being is any time before such commencement, was recognised by the President as the recognised by the President as the Ruler of the State, and includes any successor of such Ruler. person who for the time being is recognised by the President as the successor of such Ruler.

123. The validity of this amendment was challenged which came up for consideration in His Holiness Kesavananda Bharati Sirpadagalavaru v. State of Kerala, : AIR1973SC1461 . The Court after holding that the basic structure of the Constitution cannot be amended directed by its judgment dated 24th April, 1973 that the Constitution Bench will determine the validity of the Constitution (Twenty-sixth Amendment) Act, 1971 in accordance with law and the cases are remitted to the Constitution Bench for disposal in accordance with law.

This is how the matter comes before us.

124. Mr. Soli J. Sorabjee, learned Counsel for the petitioners relying on Madhav Rao's case : [1971]3SCR9 (supra) makes the following submissions.

125. Articles 291 and 362 embodied and guaranteed pledges to the Rulers. They are based on elementary principles of justice. The underlying purpose of these articles was to facilitate stabilization of the new order and to ensure organic unity of India.

126. This Court in no unmistakable terms said that Articles 366(22), 291 and 362 are integral part of the constitutional scheme. The institution of rulership is an integral part of the constitutional scheme. This enunciation of law is by a Bench of 9 Judges and is binding.

127. 'Integral' means essential. Such a provision, therefore, could constitute the basic feature of the Constitution. Consequently, the total abolition of these provisions of Constitution would necessarily damage its essential or basic feature.

128. Therefore, if the amendment damages the basic or an essential feature of the Constitution it would be beyond the constituent power of the Parliament as laid down in Waman Rao v. Union of India : AIR1981SC271 as also in Maharao Sahib Shri Bhim Singhji v. Union of India : AIR1981SC234

129. The correct approach is to examine in each case the place of the particular feature in the scheme of our Constitution, its object and purpose as was held in Indira Nehru Gandhi v. Raj Narain's case : [1976]2SCR347 .

130. It was by the incorporation of Articles 291 and 362 that the Constitution makers were able to get the willing consent and cooperation of the Rulers to be brought within the fold of the Constitution as laid down by this Court in Madhav Rao's case : [1971]3SCR9 (supra). Without the accession of the Rulers the Constitution would have been basically different. Equally, the territory of India, its population, the composition of the State Legislature and Assemblies and the Lok Sabha and Rajya Sabha would be radically different.

131. The learned Counsel seeks to emphasise the nature and the character of guarantees contained in Articles 291 and 362. When they came to be incorporated it was nothing more than the statutory recognition to the solemn promises held out by Government of India. In order to secure a truly democratic form of Government in the united independent India these solemn promises were meant to be honoured. They were intended to incorporate a just quid pro quo for surrender by them of their authority and powers and dissolution of their States.

132. By repeal of these articles it has resulted in nullification of a just quid pro quo. The underlying purpose of doing justice to the Rulers has been subverted. Breach of faith has been sanctioned. Consequently, the character and personality of the Constitution have been changed from one of honouring solemn promises and doing justice into one of breaking solemn pledges.

133. One of the tests of identifying the basic feature is, whether the identity of the Constitution has been changed. As laid down in Kesavananda Bharati's case : AIR1973SC1461 (supra), the question to be addressed is, can it maintain its identity if something quite different is substituted? The personality of the Constitution must remain unchanged. It is not necessary that the constitutional amendment which is violative of a basic or essential feature should have an instant or immediate effect on the basic structure. It is enough if it damages the essential feature as laid down in Indira Nehru Gandhi's case : [1976]2SCR347 (supra). The test to be applied, therefore, is whether the amendment contravenes or runs counter to an imperative role or postulate which is an integral part of the Constitution. As a matter of fact in Bhim Singhji's case : AIR1981SC234 (supra), it has been laid down that if a statutory provision Section 27 of the Urban Land (Ceiling & Regulation)'Act, 1976 confers unfettered discretion and thereby violates Article 14 of the Constitution, it can also damage the basic structure of the Constitution. For all these reasons, it is submitted that the impugned amendment is bad in law.

134. Mr. D.D. Thakur, learned Counsel for the petitioner supporting Mr. Soli J. Sorabjee, urges that one of the most important features of the Indian Constitution is morality. By the impugned amendment, morality is destroyed because Article 361 before the amendment contained a solemn promise to the future generations. By the impugned amendment the solemn promise is breached.

135. The privy purses are charged upon the consolidated fund of India and, therefore, goes out of control of Parliament.

136. These privy purses are payable during the lifetime of Maharajas or Princes. If, therefore, it is temporary in nature and is to last only for a stated period, would the Parliament have intended to amend the law? If that was the intention of incorporation of these provisions in the Constitution, the amendment would run counter to such an intention and, 'therefore, cannot be supported.

137. Article 14 guarantees equality which forbids unfair treatment. Where by reason of this amendment, the petitioner is subject to unfair treatment, there is an impairment of basic structure since equality is a basic structure. In connection with this submission, the learned Counsel cites cases dealing with equality as Ajay Hasia v. Khalid Mujib Sehravardi : (1981)ILLJ103SC and Minerva Mills Ltd. v. Union of India : [1981]1SCR206 .

138. In any event, privy purse is property. If the petitioner is deprived of the same, it is unfair and is violative of basic structure. Even from that point of view, the amendment cannot be supported.

139. Mr. A.K. Ganguli, learned Counsel on behalf of the intervenor in I.A.No.3/92 in W.P. 351/72 would submit that under Article 291 of the Constitution, payment of any sum has been guaranteed or assured. This guarantee is of great importance. The guarantee would mean continuity of provision. Article 32(4) also contains the word 'guarantee'. The same meaning must be ascribed to guarantee under Article 291.

140. It is not without purpose that the privy purse is charged upon the consolidated fund of India as seen from Article 112(g). In this connection, reference may be made to O.N. Mohindroo v. District Judge, Delhi : [1971]2SCR11 . As to what would constitute the basic structure, could be gathered from Kesavananda Bharati Sripadagalvaru's case : AIR1973SC1461 (supra), particularly, the passages occurring at paras 599-600, 647,648, 1171 and 1484.

141. Mr. R.F. Nariman, learned Counsel appearing for petitioner No. 1 would draw our attention to Section 87(b) of the CPC. That provision lists the immunities of foreign rulers. That was challenged as violative of Article 14 of the Constitution. That challenge was repelled in Mohanlal Jain v. Shri Swai Man Singhji : [1962]1SCR702 . On the same line of reasoning, it should be held, where by the impugned amendment, the princes who form a class is sought to be destroyed there is violation of Article 14. Wherever unequals are treated as equals, this Court has disapproved of such treatment as seen from Ramesh Prasad Singh v. State of Bihar : (1978)ILLJ197SC and Nagpur Improvement Trust v. Vithal Rao, : [1973]3SCR39 .

142. If, therefore, there is violation of Article 14 that would be offensive of basic structure as seen from Minerva Mills Ltd. case : [1981]1SCR206 (supra). It is added that the impugned amendment is violative of Article 51(c) of the Constitution.

143. The learned Attorney General in countering these submissions advanced on behalf of the petitioners, would argue that the agreements with the princes were pre-constitutional agreements. Admittedly, they were entered into for the purposes of facilitating integration of the nation and creating the constitutional documents for all citizens including those of the native States. The history of the development relating to the merger agreements and the framing of the Constitution clearly show that it is really the union of the people of the native States with the people of the erstwhile British India. The instruments of accession are the basic documents and not the individual agreements with the rulers. Therefore, to contend that the agreements were entered into by the rulers as a measure of sacrifice by them is untenable.

144. Secondly, the nature of the covenant is not that of a contract since a contract is enforceable at law. On the contrary, these covenants are made non-justiciable as seen from Article 363.

145. The covenants are political in nature and no legal ingredients as the basis can be read into these agreements as laid down in Usman Ali Khan v. Sagar Mal : [1965]3SCR201 .

146. The guarantees in Articles 291 and 362 are guarantees for the payment of privy purses. Such a guarantee can always be revoked in public interest; more so, for fulfilling a policy objective or the directive principles of the Constitution. This is precisely what the preamble to the impugned amendment says. That being so, the theory of sanctity of contract or the unamendability of Article 291 or 362 does not have any foundation. The theory of political justice is also not tenable since political justice means the principle of political equality such as adult suffrage, democratic form of Government etc.

147. The treaties/covenants etc. entered into between the Union of India and the Rulers were as a result of political action. No justiciable rights were intended to be created. Article 363 as it stood in its original form spells out this proposition. The rights and privileges in the Articles prior to the 26th Amendment were as acts of States or the Government and not in recognition of the sacrifices of the rulers. By no means, can it be contended that these guarantees given to the rulers were ever intended to be continued indefinitely.

148. Turning to basic feature, the proper test for determining basic feature is to find out what are not basic features. Rights arising out of covenants which were non-justiciable cannot be regarded as basic features. Where, therefore, Article 363 makes these features non-justiciable, the question of basic feature does not arise.

149. It is equally incorrect to contend that the amendment is violative of Article 14. There is no such violation. It is not that by the proposed amendment, Article 14 is amended. Whether a provision is violative of basic feature of the Constitution has to be decided on the language of the provisions.

150. The observations in Madhav Rao's case : [1971]3SCR9 have to be read in the context of the Constitution as it then stood. The Court did not intend limiting the amending power.

151. The 26th Amendment does not in any manner amend the Constitution impairing a basic structure.

151A. The right to property even as a fundamental right was not a part of the basic structure. Even conceding that pre-26th Amendment right to privy purses to be property, it was a right capable of being extinguished by authority of law.

152. A permanent retention of the privy purses and the privileges of the rulers would be incompatible with a sovereign and republican form of Government. Such a retention would also be incompatible with the egalitarian form of the Government envisaged by Article 14.

153. The words 'integral part of the scheme of the Constitution' in the majority judgment in Madhavrao's case : [1971]3SCR9 (supra) are not the same as basic structure. They have to be read in the context of a challenge to an ordinance which sought to render nugatory certain rights guaranteed in the Constitution then existing. In any event, the constitutional bar of Article 363 denudes the jurisdiction of any court in relation to disputes arising from covenants and treaties executed by rulers. Hence, it is idle to contend that the impugned amendment in any manner interferes with the basic structure of the Constitution.

154. Usman Ali's case : [1965]3SCR201 (supra) is still good law. What is overruled by Madhav Rao's case : [1971]3SCR9 (supra) is the political character. Articles 291 and 362, 366(22) could never have intended to form a basic structure. They have no overall applicability permeating throughout the entire Constitution so to say that their absence will change the nature of the Constitution. The intrinsic evidence is the availability of a machinery for enforcement. In the case of the rights guaranteed under Part III of the Constitution, a machinery is available for the enforcement. On the contrary, such a machinery for enforcement of privy purses is not available under Article 363. Therefore, it is submitted that it is an inferior right than the fundamental right. Hence, it cannot be called a basic structure at all. As to what is the meaning of basic structure, reference must be made to Kesavananda's case : AIR1973SC1461 (supra).

155. The learned Attorney General also draws our attention to an Article of K. Subba Rao, Ex-Chief Justice of India in : (1973)IILLJ120SC journal section entitled as 'The two judgments : Golaknath and Kesavananda Bharati'.

156. As to the morality part of the impugned amendment, it is urged that there is nothing immoral about it. Where the changed situation and anxiety to establish an egalitarian society require the change of law is valid.

157. In reply to these submissions, Mr. Soli J. Sorabjee would contend that the submissions of learned Attorney General that the guarantees under Articles 291 and 362 are unenforceable in view of Article 363 are not tenable in view of the judgment of this Court in Madhav Rao's case : [1971]3SCR9 (supra).

158. It is also not correct to argue that it is an act of State and therefore, no relief can be granted in respect of matters covered by it. Such a submission has not been accepted by this Court as seen from Madhav Rao's case (supra) : [1971]3SCR9 .

159. Strong reliance was placed on Usman Ali Khan's case : [1965]3SCR201 (supra) that the privy purses are in the nature of compensation. The observations relied upon by the learned Attorney General have been regarded by the majority in Madhav Rao's case : [1971]3SCR9 (supra) as not only obiter but also incorrect as seen from Usman Ali Khan's case at pages 98, 145 and 193 (of SCR) : at pages 578, 605 and 634 of AIR. The submission that the privy purses are mere privileges is contrary to the decision of Madhav Rao's case (supra) since these have been held to be fundamental rights guaranteed under Articles 19(1)(b) and 31.

160. Having regard to the above submissions, the sole question would be whether the 26th Amendment is beyond the constituent power of the Parliament? To put it in another words, does the amendment damage any basic or essential feature of the Constitution?

161. The law prior to and after 26th Amendment has already been set out in the tabulated statement. As could be seen by the impugned amendment, Articles 291 and 362 have come to be omitted. A new Article 363A has come to be inserted. The original Clause 22 of Article 366 has come to be substituted by a new clause. In pith and substance, this amendment seeks to terminate the privy purses and privileges of the Princes of the former Indian States. It also seeks to terminate expressly the recognition already granted to them as guaranteed and assured under Articles 291 and 362 of the Constitution. Therefore, the impugned amendment has withdrawn the guarantees and assurances and abolished the privy purses, personal rights, privileges and dignities. The validity of the amendment is attacked as under:

i) Articles 291 and 362 and 366(22) of the Constitution form an important basic structure and demolition of

these articles would amount to violation of basic structure.

ii) The covenants entered into are in the nature of contracts backed by constitutional guarantees. They are further affirmed by making the privy purses an expenditure charged upon the consolidated fund of India. Such being the position, a breach of the covenant cannot be made since they were intended to incorporate a just quid pro quo which has come to be nullified by the impugned amendment.

iii) It is arbitrary and unreasonable and is, therefore, violative of Article 14 and consequently basic structure.

iv) It is not moral.

BACKGROUND

162. In order to appreciate the above points, it is necessary to set out the background in which the Articles came to be incorporated in the Constitution. It was on July 5th, 1947, Sardar Vallabhbhai Patel exhorted as under:

This country, with its institutions, is the proud heritage of the people who inhabit it. It is an accident that some live in the States and some in British India, but all alike partake of its culture and character. We are all knit together by bonds of blood and feeling no less than of self-interest. None can segregate us into segments; no impassable barriers can be set up between us. I suggest that it is, therefore, better for us to make laws sitting together as friends than to make treaties as aliens. I invite my friends, the Rulers of States and their people to the councils of the Constituent Assembly in this spirit of friendliness and cooperation in a joint endeavour, inspired by common allegiance to our motherland for the common good of us all.

We are at a momentous stage in the History of India. By common endeavour, we can raise the country to a new greatness while lack of unity will expose us to fresh calamities. I hope the Indian States will bear in mind that the alternative to co-operation in the general interest is anarchy and chaos which will overwhelm great and small in a common ruin if we are unable to get together in the minimum of common tasks. Let not the future generation curse us for having had the opportunity but failed to turn it to our mutual advantage. Instead, let it be our proud privilege to leave a legacy of mutually beneficial relationship which would raise this sacred land to its proper place amongst the nations of the world and turn it into an abode of peace and prosperity.

While clarifying the position, he spoke on 13th November, 1947:

The State does not belong to any individual. Paramountcy has been eliminated, certainly not by the efforts of the Princes, but by that of the people. It is, therefore, the people who have got the right to assert themselves and the Nawab cannot barter away the popular privilege of shaping its destiny.

163. In this connection, it is worthwhile to quote the following from 'The framing of India's Constitution' by B. Shiva Rao at page 520 as under:

The Indian National Congress was in the past well-known for its sympathy with the Indian States People's Conference, a body which sought to establish popular Governments in the States. Jawaharlal Nehru himself was closely associated with this movement. The start of the proceedings in the Constituent Assembly was not particularly propitious for cooperation between the Assembly and the Rulers. Moving the Objectives Resolution on December 13, 1946, in the Constituent Assembly (in which neither the Indian States nor the Muslim League were at that time represented) Nehru explained that the resolution did not concern itself with what form of Government the States had or 'whether the Rajas and Nawabs will continue or not'. He also emphasized that if a part of the Indian Republic desired to have its own administration it was welcome to have it. But at the same time he made it clear that the final decision in the matter whether or not there should be a monarchical form of Government in the States was one for decision by the people of the States.

164. The political background in which the Articles came up to be incorporated in the Constitution has already been set out. At this stage, what requires emphasis is that the people brought about the integration of the States with the erstwhile British India which came to be freed from the foreign yoke. This is very clear from the speech of Sardar Vallabhbhai Patel on 13th November, 1947 quoted above.

165. It was in recognition of the privileges and powers which existed hitherto the privy purses came to be conferred. The articles assured the payment of privy purses.

NATURE OF PRIVY PURSE

166. What exactly is a nature of privy purse in the realm of law could be gathered from Usman Ali Khan's case (supra) : [1965]3SCR201 as under:

The third contention of Mr. Pathak raises the question whether an amount payable to a Ruler of a former Indian State as privy purse is a political pension within the meaning of Section 60(1)(g), CPC. The word 'pension' in Section 60(1)(g), CPC implies periodical payments of money by the Government to the pensioner. See Nawab Bahadur of Murshidabad v. Karnani Industrial Bank Ltd. (1931) LR 58 Ind App 215 and in BishambharNath v. Nawab Imdad Ali Khan, (1890) LR 17 Ind App 181 Lord Watson observed: A pension which the Government of India has given a guarantee that it will pay, by a treaty obligation contracted with another sovereign power, appears to their Lordships to be, in the strictest sense, a political pension. The obligation to pay, as well as the actual payment of the pension must, in such circumstances, be ascribed to reasons of State policy.

Now, the history of the integration and the ultimate absorption of the Indian States and of the guarantee for payment of periodical sums as privy purse to the Rulers of the former Indian States are well-known. Formerly Indian States were semi-sovereign vassal States under the suzerainty of the British Crown. With the declaration of Independence, the paramountcy of the British Crown lapsed as from August 15, 1947, and the Rulers of Indian States became politically independent sovereigns. The Indian States parted with their sovereignty in successive stages, firstly on accession to the Dominion of India, secondly on integration of the States into sizeable administrative units and on closer accession to the Dominion of India and finally on adoption of the Constitution of India and extinction of the separate existence of the States and Unions of States. During the second phase of this political absorption of the States, the Rulers of the Madhya Bharat States including the Ruler of Jaora State entered into a Covenant on April 22,1948 for the formation of the United States of Gwalior, Indore and Malwa (Madhya Bharat). By Article II of the Covenant, the Covenanting States agreed to unite and integrate their territories into one State. Article VI provided that the Ruler of each Covenanting State shall not later than July 1, 1948 make over the administration of the State to the Rajpramukh and thereupon all rights, authority and jurisdiction belonging to the Ruler and appertaining or incidental to the Government of the State would vest in the United State of Madhya Bharat. Article XI(1) provided that 'the Ruler of each Covenanting State shall be entitled to receive annually from the revenues of the United State for his privy purse the amount specified against that Covenanting State in Schedule I'. In Schedule I, a sum of Rs. 1,75,000 was specified against the State of Jaora. Article XI(2) provided that the amount of the privy purse was intended to cover all the expenses of the Ruler and his family including expenses of the residence, marriage and other ceremonies and neither be increased nor reduced for any reason whatsoever. Article XI(3) provided that the Rajpramukh would cause the amount to be paid to the Ruler in four equal instalments at the beginning of each quarter in advance. Article XI(4) provided that the amount would be free of all taxes whether imposed by the Government of the United State or by the Government of India. Article XIII of the Covenant secured to the Ruler of each Covenanting State all personal privileges, dignities and titles then enjoyed by them. Article XIV guaranteed the succession, according to law and custom, to the gaddi of each Covenanting State and to the personal rights, privileges, dignities and titles of the Ruler. The Covenant was signed by all the Rulers of the Covenanting State. At the foot of the Covenant, it was stated that 'The Rulers Government of India thereby Concur in the above Covenant and guarantee all its provisions'. In co-information of this consent and guarantee, the Covenant was signed by a Secretary to

the Government of India.

On the coming into force of the Constitution of India, the territories of Madhya Bharat became an integral part of India. Article 291 of the Constitution provided:

Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy purse:

(a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and

(b) the sums so paid to any Ruler shall be exempt from all taxes on income.

In view of the guarantee by the Government of the Dominion of India to the Ruler of Jaora State in the Covenant for the formation of the United State of Madhya Bharat, the payment of the sums specified in the Covenant as privy purse to the Ruler became charged on the Consolidated Fund of India, and became payable to him free from all taxes on income. Article 362 provides that in the exercise of the legislative and executive powers, due regard shall be had to the guarantee given in any such covenant as is referred to in Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State. Article 363(1) provides that notwithstanding anything contained in the Constitution, the Courts would have no jurisdiction in any dispute arising out of any provision in any covenant entered into by any Ruler of an Indian State to which the Government of the Dominion of India was a party, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any such covenant. Article 366(22) provides that the expression 'Ruler' in relation to an Indian State means a person by whom the covenant referred to in Article 299(1) was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler.

Now, the Covenant entered into by the Rulers of Madhya Bharat States by which they gave up their sovereignty over their respective territories and vested it in the new United State of Madhya Bharat. The Coven-ant was an act of State, and any violation of its terms cannot form the subject of any action in any municipal courts. The guarantee given by the Government of India was in the nature of a treaty obligation contracted with the sovereign Rulers of Indian States and cannot be enforced by action in municipal courts. Is sanction is political and not legal. On the coming into force of the Constitution of India, the guarantee for the payment of periodical sums as privy purse is continued by Article 291 of the Constitution, but its essential political character is preserved by Article 363 of the Constitution, and the obligation under this guarantee cannot be enforced in any municipal court. Moreover, if the President refuses to recognise the person by whom the covenant was entered into as the Ruler of the State, he would not be entitled to the amount payable as privy purse under Article 291. Now, the periodical payment of money by the Government to a Ruler of a former Indian State as privy purse on political considerations and under political sanctions and not under a right legally enforceable in any municipal court is strictly a political pension within the meaning of Section 60(l)(g) of the CPC. The use of the expression 'privy purse' instead of the expression 'pension' is due to historical reasons. The privy purse satisfies all the essential characteristics of a political pension, and as such, is protected from execution under Section 60(1)(g), CPC. Moreover, an amount of the privy purse receivable from the Government cannot be said to be debt or other property over which or the proceeds of which he has disposing power within the main part of Section 60(1), CPC. It follows that the third contention of Mr. Pathak must be accepted, and it must be held that the amounts of the privy purse are not liable to attachment or sale in execution of the respondent's decree.

(Emphasis supplied)

167. This case is an authority, for the proposition that it is a political pension. The question is whether this dictum has been overruled by Madhav Rao's case : [1971]3SCR9 (supra).

168. At page 145 of : [1971]3SCR9 of the said decision, it is held:

On the coming into force of the Constitution of India, the guarantee for payment of periodical sums as privy purse is continued by Article 291 of the Constitution, but its essential political character is preserved by Article 363 of the Constitution and the obligation under this guarantee cannot be enforced in any municipal court. With all respect, it appears to me that all the above was not strictly necessary for the decision of the case and it would have been enough to say that privy purse was pension-a word which according to the Oxford Dictionary means, 'a periodical payment made specially by a Government, company, employer etc.'-which was political in nature because it was based on a political settlement. How ever it was not the expression of opinion of only one learned Judge but the unanimous view of three learned Judges of this Court. In Kunwar Shri Vir Rajendra Singh v. Union of India, : [1970]2SCR631 a Bench of another five learned Judges of this Court have pronounced on the non-enforceability of the provision for payment of privy purse under Article 291 by resort to legal proceedings. In my view, on the reasoning already given by me it must be held that the payment of privy purse although placed on a pedestal which defies annihilation or fragmentation as long as the above mentioned constitutional provisions enure is still subject to the constitutional bar of non-justifiability and cannot be upheld or secured by adjudication in a court of law including this Court.

169. Further, at page 193 of : [1971]3SCR9 of the said decision, it is held:

The learned Judges in that case had no occasion to consider nor did they go into the scope of Article 291 or Article 363. Every observation of this Court is no doubt, entitled to weight but an obiter cannot take the place of the ratio.

170. A careful reading of the above shows what is overruled is the political character and not that the privy purse is not a political pension. Even otherwise, if really, this dictum has been overruled, the very basis of the judgment of Usman Ali Khan's case : [1965]3SCR201 (supra) would disappear. Then the reasoning in relation to the attachability under Section 60 of CPC would be incorrect. Be that so, what is argued by Mr. Soli J. Sorabjee is the guarantee under Article 291 is enforceable notwithstanding Article 363. Therefore,.this discussion need not detain us. As to the scope of Article 363, it could be culled from Madhav Rao's case (supra) : [1971]3SCR9 :

A dispute as to the right to receive the privy purse is therefore not a dispute arising out of the covenant within the first limb of Article 363, nor is it a dispute with regard to a right accruing or obligation arising out of a provision of the Constitution relating to a covenant.

But since the right to the privy purse arises under Article 291 the dispute in respect of which does not fall within either clause, the jurisdiction of the Court is not excluded in respect of disputes relating to personal rights and privileges which are granted by statutes.

171. One thing which must be borne in mind while appreciating the scope of Madhav Rao's case : [1971]3SCR9 (supra) is what occurs at page 75 (of SCR) : at p. 565 of AIR as under :

Scope of Scindia Ruling

Whether the Parliament may by a constitutional amendment abolish the rights and privileges accorded to the Rulers is not and cannot be, debated in this petition, for no such constitutional amendment has been made. The petitioner challenges the authority of the President by an order purporting to be made under Article 366(22) to withdraw recognition of Rulers so as to deprive them of the rights and privileges to which they are entitled by virtue of their status as Rulers.

(Emphasis supplied)

172. This Court had no occasion to go into the scope of constitutional amendment like the present one. Therefore, all reasons addressed for striking down the presidential order must be confined only to the

authority of the President to issue the order under Article 366(22) of the Constitution.

BASIC STRUCTURE

173. This takes us to the power of amendment conferred under Article 368. That power of amendment is unlimited except that the basic structure of the Constitution cannot be amended. What then is the basic structure?

174. In Kesavananda's case (supra), Sikri, C.J. stated : AIR1973SC1461 as under:

Whether Articles 291 and 362, 366(22)

The learned Attorney-General said that every provision of the Constitution is .essential; otherwise, it would not have been put in the Constitution. This is true. But this does not place every provision of the Constitution in the same position. The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. The basic structure may be said to consist of the following features:

i) Supremacy of the Constitution;

ii) Republican and Democratic form of Government;

iii) Secular character of the Constitution;

iv) Separation of powers between the Legislature, the executive and the judiciary;

v) Federal character of the Constitution.

The above structure is built on the basic foundation, i.e. the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed.

The above foundation and the above basic features are easily discernible not only from the preamble but the whole scheme of the Constitution, which I have already discussed.

Shelat and Grover, JJ. in the said judgment stated at page 280 (of Supp SCR) : at p. 1603 of AIR as under:

The basic structure of the Constitution is not a vague concept and the apprehensions expressed on behalf of the respondents that neither the citizen nor the Parliament would be able to understand it are unfounded. If the historical background, the Preamble, the entire scheme of the Constitution, the relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalouged but can only be illustrated).

1. The supremacy of the Constitution.

2. Republican and Democratic form of Government and sovereignty of the country.

3. Secular and federal character of the Constitution.

4. Demarcation of power between the legislature, the executive and the judiciary.

5. The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.

6. The unity and the integrity of the nation.

Hedge and Mukherjea, JJ. in the said judgment stated at page 314 (of Supp SCR) : at 1624 of AIR as under:

We find it difficult to accept the contention that our Constitution makers after making immense sacrifices for achieving certain ideals made provision in the Constitution itself for the destruction of these ideals. There is no doubt as men of experience and sound political knowledge, they must have known that social, economic and political changes are bound to come with the passage of time and the Constitution must be capable of being so adjusted as to be able to respond to those new demands. Our Constitution is not a mere political document. It is essentially, a social document. It is based on a social philosophy and every social philosophy like every religion has two main features, namely, basic and circumstantial. The former remains constant but the latter is subject to change. The core of a religion always remains constant but the practices associated with it may change. Likewise, a Constitution like ours contains certain features which so essential that they cannot be changed or destroyed. In any event it cannot be destroyed from within. In other words, one cannot legally use the Constitution to destroy itself. Under Article 368 the amended Constitution must remain 'the Constitution' which means the original Constitution. When we speak of the 'abrogation' or 'repeal' of the Constitution, we do not refer to any form but substance. If one or more of the basic features of the Constitution are taken away to that extent the Constitution is abrogated or repealed. If all the basic features of the Constitution are repealed and some other provisions inconsistent with those features are incorporated, it cannot still remain the Constitution referred to in Article 368. The personality of the Constitution must remain unchanged.

(Emphasis supplied)

Further, at page 322 (of Supp SCR) : at p. 1628 of AIR, it was stated as under:

On a careful consideration of the various aspects of the case we are convinced that the Parliament has no power to abrogate or emasculate the basic elements or fundamental features of the Constitution such as the sovereignty of India, the democratic character of the individual freedoms secured to the citizens. Nor has the Parliament the power to revoke the mandate to built a welfare State and egalitarian society.

Jaganmohan Reddy, J. in the said judgment stated at page 517 (of Supp SCR) : at p. 1753 of AIR as under:

I will now consider the question which has been strenuously contended, namely, that there are no essential features, that every feature in the Constitution is essential, and if this were not so, the amending power under the Constitution will apply only to nonessential features which it would be difficult to envisage was the only purpose of the framers in inscribing Article 368 and that, therefore, there is no warrant for such a concept to be read into the Constitution. The argument at first flush is attractive, but if we were to ask ourselves the question whether the Constitution has any structure or is structureless or is a 'jelly fish' to use an epithet of the learned Advocate for the petitioner, the answer would resolve our doubt. If the Constitution is considered as a mechanism, or call it an organism or a piece of constitutional engineering, whichever it is, it must have a structure, or a composition or a base or foundation. What it is can only be ascertained, if we examine the provisions which the Hon'ble Chief Justice has done in great detail after which he has instanced the features which constitute the basic structure. I do not intend to cover the same field once again. There is nothing vague or unascertainable in the preamble and if what is stated therein is subject to this criticism it would be equally true of what is stated in Article 39(b) and (c) as these are also objectives fundamental in the governance of the country which the State is enjoined to achieve for the amelioration and happiness of its people. The elements of the basic structure are indicated in the preamble and translated in the various provisions of the Constitution. The edifice of our Constitution is built upon and stands on several props, remove any of them the Constitution collapses. These are : (1) Sovereign Democratic Republic; (2) Justice, social, economic and political; (3) Liberty of thought, expression, belief, faith and worship; (4) Equality of status and of opportunity. Each one of these is important and collectively they assure a way of life to the people of India which the Constitution guarantees. To withdraw any of the above elements the structure will not survive and it will not be the same Constitution, or this Constitution nor can it maintain its identity, if something quite different is substituted in its place, which the sovereign will of the people alone can do.

Palekar, J. in the said judgment would say at page 619 (of Supp SCR) : at pp. 1819-20 of AIR:

Since the 'essential features and basic principles' referred to Mr. Palkhivala are those culled from the provisions of the Constitution it is clear that he wants to divide the Constitution into parts-one of the provisions containing the essential features and the other containing non-essential features. According to him the latter can be amended in any way the Parliament likes, but so far as the former provisions are concerned, though they may be amended, they cannot be amended so as to damage or destroy the core of the essential features. Two difficulties arise. Who is to decide what are essential provisions and non-essential provisions? According to Mr. Palkhivala it is the court which should do it. If that is correct, what stable standard will guide the court in deciding which provision is essential and which is not essential? Every provision, in one sense, is an essential provision, because if a law is made by the Parliament or the State Legislatures contravening even the most insignificant provision of the Constitution, that law will be void. From that point of view the courts acting under the Constitution will have to look upon its provisions with an equal eye. Secondly, if an essential provision is amended and a new provision is inserted which, in the opinion of the constituent body, should be presumed to be more essential than the one repealed. What is the yardstick the court is expected to employ? It will only mean that whatever necessity the constituent body may feel in introducing a change in the Constitution, whatever change of policy that body may like to introduce in the Constitution, the same is liable to be struck down if the court is not satisfied either about the necessity or the policy. Clearly this is not a function of the courts. The difficulty assumes greater proportion when an amendment is challenged on the ground that the core of an essential feature is either damaged or destroyed. What is the standard? Who will decide where the core lies and when it is reached? One can understand the argument that particular provisions in the Constitution embodying some essential features are not amendable at all. But the difficulty arises when it is conceded that the provision is liable to be amended, but not so as to touch its 'core'. Apart from the difficulty in determining where the 'core of an essential feature' lies, it does not appear to be sufficiently realized what fantastic results may follow in working the Constitution. Suppose an amendment of a provision is made this year. The mere fact that an amendment is made will not give anybody the right to come to this Court to have the amendment nullified on the ground that it affects the core of an essential feature. It is only when a law is made under the amended provision and that law affects some individual's right, that he may come to this Court. At that time he will first show that the amendment is bad because it affects the core of an essential feature and if he succeeds there, he will automatically succeed and the law made by the Legislature in the confidence that it is protected by the amended Constitution will be rendered void.

Khanna, J. in the said judgment at page 720 (of Supp SCR) : at p. 1881 of AIR stated as under:

So far as the question is concerned as to whether the right to property can be said to pertain to basic structure or framework of the Constitution, the answer, in my opinion, should plainly be in the negative.

Mathew, J. in the said judgment at pages 827-828 (of Supp SCR) : at pp. 1947-48 of AIR observed:

But the question will still remain, even when the core or the essence of a Fundamental Right is found, whether the Amending Body has the power to amend it in such a way as to destroy or damage the core. I have already said that considerations of justice, of the common good, or 'the general welfare in a democratic society' might require abridging or taking away of the Fundamental Rights.

I have tried, like Jacob of the Old Testament to wrestle all the night with the angel, namely, the theory of implied limitation upon the power of amendment. I have yet to learn from what source this limitation arises. Is it because the people who were supposed to have framed the Constitution intended it and embodied the intention in an unalterable framework? If this is so, it would raise the fundamental issue whether that intention should govern the succeeding generations for all time. If you subscribe to theory of Jefferson, to which I have already referred and which was fully adopted by Dr. Ambedkar, the principal architect of our Constitution-and that is the only sane theory-I think there is no foundation for the theory of implied

limitations. Were it otherwise, in actual reality it would come to this : The representatives of some people-the framers of our Constitution-could bind the whole people for all time and prevent them from changing the constitutional structure through their representatives. And, what is this sacred- ness about the basic structure of the Constitution? Take the republican form of Government, the supposed cornerstone of the whole structure. Has mankind, after its wandering through history, made a final and unalterable verdict that it is the best form of Government? Does not history show that mankind has changed its opinion from generation to generation as to the best form of Government? Have not great philosophers and thinkers throughout the ages expressed different views on the subject? Did not Plato prefer the rule by the Guardians? And was the sapient Aristotle misled when he showed his proclivity for a mixed form of Government? If there was no concensus yesterday, why expect one tomorrow?

175. Commenting on this case and Golaknath's decision, Subba Rao, Ex. C.J.I, in the The two judgments : Golaknath : [1967]2SCR762 and Kesavananda Bharati : AIR1973SC1461 (supra) says at page 18:

The result is that the Supreme Court by majority declared that the Parliament under the Indian Constitution is not supreme, in that it cannot change the basic structure of the Constitution. It also declared by majority that under certain circumstances, the amendment of the fundamental rights other than the right to property would affect the basic structure and therefore would be void. The question whether the amendment of the fundamental right to property would under some circumstances affect the basic structure of. the Constitution is not free from doubt; the answer depends upon the view the Supreme Court takes hereafter of the impact of the opinion of Mathew, Beg, Dwivedi and Chandrachud, JJ.-the fundamental rights are the basic features of the Constitution on the opinion of the six judges, who held that the core of the fundamental rights is part of the basic structure of the Constitution. One possible view is that together they form a clear majority on the content of the basic structure; another possible view is that their opinion should be read along with their finding that the entire Constitution except perhaps the bare machine of Government, could be repealed by amendment

176. If this be the law, the question would be whether Articles 291 and 362, 366(22) could ever be intended to form a basic structure. The answer should be in the negative. They have no overall applicability permeating through the entire Constitution that the absence of these provisions will change the nature and character of the Constitution. While examining the question whether these Articles constitute the basic structure, one must have regard to Article 363 of the Constitution. They are made unenforceable in a Court of Law. If really they are to form basic structure, would not a corresponding right as occurring under Article 32(4) would have been provided?

177. In Indira Nehru Gandhi's case : [1976]2SCR347 (supra), the following observations are found in para 663 of Supp SCC : para 666 of AIR:

Preamble vis-a-vis object of amendment: The preamble, generally, uses words of 'passion and power' in order to move the hearts of men and to stir them into action. Its own meaning and implication being in doubt, the preamble cannot affect or throw light on the meaning of the enacting words of the Constitution. Therefore, though our preamble was voted upon as is a part of the Constitution, it is really 'a preliminary statement of the reasons' which made the passing of the Constitution necessary and desirable. As observed by Gajendragadkar, J. in In re Berubari Union v. Exchange of Enclaves : [1960]3SCR250 , what Willoughby has said about the preamble to the American Constitution, namely, that it has never been regard ed as the source of any substantive power, is equally true about the prohibitions and limitations. The preamble of our Constitution cannot therefore be regarded as a source of any prohibitions or limitations.

178. Therefore, regard must be had to the scope of the preamble which states:

The concept of Rulership, with privy purses and special privileges un-related to any current functions and, social purposes, is incompatible with an egalitarian social order. Government have therefore decided to terminate the privy purses and privileges of the Rulers of former Indian States. It is necessary for the purpose,

apart from amending the relevant provisions of the Constitution, to insert a new article therein so as to terminate expressly the recognition already granted to such rulers and to abolish privy purses and extinguish all rights, liabilities and obligations in respect of privy purses.

179. If the 26th amendment aims to establish an egalitarian society which is in consonance with the glorious preamble, how could this provision be called a basic structure? No doubt, in Madhav Rao's case : [1971]3SCR9 (supra), it was held that these provisions are an integral part of the Constitution of this country. Apart from the fact that all these reasons were addressed against the power of the President under Article 366(22), this statement cannot tantamount to basic structure. Nor would it mean the same as the basic structure.

180. To determine whether these provisions constitute basic structure or not, they cannot be viewed in the historic background. By repeal of these provisions the personality of the Constitution has not changed. India could still retain its identity and it can hardly be said that the personality has changed.

CHANGE OF TIME & LAW

181. The repudiation of the guarantee might result in the nullification of a just quid pro quo. But, if it is the Will of the people to establish an egalitarian society that will be in harmony with the changing tunes of times. It cannot be denied that law cannot remain 'static for all times to come. The extract of Mathew, J. in Keshavanand's case : AIR1973SC1461 highlights this aspect as under:

But the question will still remain, even when the core or the essence of a fundamental Right is found, whether the Amending Body has the power to amend it in such a way as to destroy or damage the core. I have already said that considerations of justice, of the common good, or 'the general welfare in a democratic society' might require abridging or taking away of the Fundamental Rights.

182. Weems v. United States (1909) 54 Law 801 quoted in Francis Coralie Mullin v. Administrator, Union Territory of Delhi : 1981CriLJ306 succinctly states the law on this aspect as under:

Time works changes, brings into existence new conditions and purposes. Therefore, a principle, to be vital, must be capable of wider application than mischief which gave it birth This is peculiarly true of Constitutions. They are not ephemeral enactments designed to meet passing occasions. They are, to use the words of Chief Justice Marshal, 'designed to approach immortality as nearly as human institutions can approach it'. The future is their care, and provisions for events of good and bad tendencies of which no prophecy can be made. In the application of a Constitution, therefore, our contemplation cannot be only of what has been, but of what may be. Under any other rule a Constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formulas. Rights declared in the words might be lost in reality. And this has been recognised. The meaning and vitality of the Constitution have developed against narrow and restrictive construction.

(Emphasis supplied)

Robert S. Peck in 'The Bill of Rights and the Politics of Interpretation' states at pages 316-317 as under:

The Constitution, then, is not a beginning nor an end, but part of a timeless process. Any Constitution 'intended to endure for ages to come' (Mcculloch v. Maryland, 17 US 316 cannot be a closed system of temporally bound. The Constitution is more properly seen as part of a stream of history. That stream is not always unbroken and has, frequently, taken radical turns. That this path has been winding is not surprising, since history is not a steady and predictable progression following earlier events. Still, constitutional rights must be viewed as travelling down a single historic stream. Today's conclusions, to remain principles and persuasive, need to relate back to earlier origins. When cases come before the Courts, purposes and concerns of timeless character require translation into practical rules that apply to their molt modern manifestations. In this role, courts perform a mediating function, harmonizing different strands into a coherent order. But the

courts do not exercise an exclusive' authority in giving coherence to constitutional law. Political leaders and political institutions have played this role as well, advancing both the law and the mechanisms available to promote constitutional liberty. 'Great constitutional provisions must be administered with caution', Justice Oliver Wendell Holmes reminded us. 'Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts. (Missouri, Kansas & Texas Rly. Co. v. May (1903) 194 US 267

The courts are insulated from the political winds that buffet, motivate, and sometimes disable a legislature. This independence from the larger political world is critical to the successful discharge of the tasks we assign the judiciary. Nevertheless, the courts operate in a political world of their own. In this variety of politics, courts must harmonize past with present, conflict with resolution, change with continuity. And they must contend with a variety of interest groups that influence the process by their actions and by the appeal of their arguments.

183. In the words of the famous poet James Russell Lowell:

New occasions teach new duties; Time makes ancient good uncouth; they must upward still, and onward, who would keep abreast of Truth.

184. No doubt, unity and integrity of India would constitute the basic structure as laid down in Keshwanand's case : AIR1973SC1461 (supra) but it is too far-fetched claim to state that the guarantees and assurances in these Articles have gone into the process of unification and integration of the country. One cannot lose sight of the fact that it was the will of the people and the urge to breathe free air of independent India as equal citizens that brought about the merger of these princely States. Therefore, the contention that the Articles 291 and 362 facilitated the organic unity of India is unacceptable.

185. Next as to the violation of Article 14, it is true as laid down in Bhimsinghji's case (supra) that if a particular provision of a Constitution violates Article 14, it would affect the basic structure of the Constitution. This case dealt with the validity of Section 27(1) of the Urban Land (Ceiling and Regulation) Act, 1976. The relevant portion of the judgment in L himsinghji's case : AIR1981SC234 (supra) can now be extracted:

Per Tulzapurkar, J.

Violation of Article 14Further, the restriction Under Section 27(1) in the absence of any guidelines governing the exercise of the power on the part of the competent authority in the matter of granting or refusing to grant the permission is highly arbitrary, productive of discriminatory results and, therefore, violates the equality clause of Article 14. Which of the three objectives mentioned in the preamble should guide the exercise of power by the competent authority in any given case is not clear and in any case no standard has been laid down for achieving the objectives of preventing concentration, speculation, and profiteering in urban land or urban property. Because of these reasons the provisions for appeal and revision under Sections 33 and 34 against the order passed by the competent authority under Section 27, would also not be of much avail to preventing arbitrariness in the matter of granting or refusing to grant the permission. Section 27 is thus ultra vires and unconstitutional.

Per Chandrachud, C.J. and Bhagwati, J. (Krishna Iyer, J., concurring)

Sub-section (1) of Section 27 of the Act is invalid insofar as it imposes a restriction on transfer of any urban or urbanisable land with a building or a portion only of such building, which is within the ceiling area. Such property will, therefore, be transferable without the constrains mentioned in Sub-section (1) of the Act. (paras 5, 8 and 10)

Per Krishna Iyer, J. (concurring)

I agree with the learned Chief Justice both regarding the constitutionality of the legislation and regarding

partial invalidation of Section 27(1).

Per Sen, J.

Sub-sections (1), (2) and (3) of Section 23 and the opening words 'subject to the provisions of Sub-sections (1), (2) and (3) in Section 23(4) are ultra vires the Parliament and are not protected by Articles 31-B and 31-C of the Constitution and further, Section 27(1) is invalid insofar as, it imposes a restriction on, transfer of urban property for a period of ten years from the commencement of the Act, in . relation to vacant land or building thereon, within the ceiling limits.

Krishna Iyer, J. stated in the said judgment at page 186 of SCC : at pp. 242-43 of AIR as under:

The question of basic structure being breached cannot arise when we examine the vires of an ordinary legislation as distinguished from a constitutional amendment. Kesavananda Bharati : 1972CriLJ1526 cannot be the last refuge of the Proprietariat when benign legislation takes away their 'excess' for societal weal. Nor, indeed, can every breach of equality spell disaster as a lethal violation of the basic structure. Peripheral inequality is inevitable when large-scale equalisation processes are put into action. If all the judges of the Supreme Court in solemn session sit and deliberate for half a year to produce a legislation for reducing glaring economic inequality their genius will let them down if the essay is to avoid even peripheral inequalities. Every large cause claims some martyr, as sociologists will know. Therefore, what is a betrayal of the basic feature is not a mere violation of Article 14 but a shocking, unconscienable or unscrupulous travesty of the quintessence of equal justice. If a legislation does go that far it shakes the democratic foundation and must suffer the death penalty. But to permit the Bharati : AIR1973SC1461 (supra) ghost to haunt the corridors of the court brandishing fatal writs for every feature of inequality is judicial paralysation of parliamentary function. Nor can the constitutional fascination for the basic structure doctrine be made a Trojan horse to penetrate the entire legislative camp fighting for a new social order and to overpower the battle for abolition of basic poverty by the 'basic structure' missile. Which is more basic? Eradication oddie-hard, deadly and pervasive penury degrading all human rights or upholding of the legal luxury of perfect symmetry and absolute equality attractively presented to preserve the status quo ante? To use the Constitution to defeat the Constitution cannot find favour with the judiciary. I have no doubt that the strategy of using the missile of 'equality' to preserve die-hard, dreadful societal inequality is a stratagem which must be given short shrift by this Court. The imperatives of equality and development are impatient for implementation and judicial scapegoats must never be offered so that those responsible for stalling economic transformation with a social justice slant may be identified and exposed of Part IV is a basic goal of the nation and now that the Court upholds the urban ceiling law, a social audit of the Executive's implementation a year or two later will bring to light the gaping gap between verbal valour of the statute book and the executive slumber of law-in-action. The Court is not the anti-hero in the tragedy of land reform, urban and agrarian.

186. In this case, the amendment does not either treat unequals as equals or in any manner violates Article 14. All the privy purses holders are treated alike by the withdrawal of all those privileges.

187. The next aspect of the matter is how far can the Court concern with morality in withdrawing these assurances and guarantees.

188. The following extract from 'Law and Morality' by Louis Blom-Cooper Gavin Drewry at page 2 is very useful:

The relationship between law and morals is in effect quadripartite, but it is only the fourth part that engages our current interest. The first part is an historical and casual question. Has the law been influenced by moral principles? No one doubts the answer is affirmative; conversely law has influenced moral principles. The Suicide Act, 1961 no doubt accurately reflected the long-standing moral view that to take one's own life was not a crime against the law, a view which had not always been shared by the judiciary (originally for reasons having to do as much with property as with theological morality). The statutory abolition of the crime of

suicide in its turn buttressed and affirmed the moral attitude.

The second part questions whether law necessarily refers to morality at all; do morals and law overlap in practice, simply because both share the common vocabulary of rights and duties? It is here that the natural lawyers and legal positivists have engaged most fiercely in controversy. The antagonists have found temporary refuge in the sterile argument about whether law is open to moral criticism.

Can a rule of law, 'properly' derived (in constitutional terms) to be held to conflict with some moral principle? Those who witnessed Parliament, through the vehicle of the War Damage Act, 1965 reversing retrospectively the House of Lords' decision in Burmah Oil Co. Ltd. v. Lord Advocate (1965) AC 75 and thus depriving a large corporation of its fruits of litigation, would acknowledge readily the dissociation of law and political, if not social, morality. In any event, does it matter that the law is immorally enacted, if we are all bound by it? Its enforceability (if not its actual enforcement) is unlikely to be affected by such theoretical objections. Perhaps political morality can be defined only in terms of the franchise, and the efficacy of representative Government- though again the argument rests on a philosophical and psychological, rather than on an empirical plane.

Then again, dealing with constraints on constitutional interpretation, Kent Greenawalt in 'Conflicts of Law and Morality' 1987 Edition states at p. 338 as follows:

Impugned amendment whether moral

Like ordinary legislation, constitutional provisions protecting rights reflects the moral judgments of those who adopted them, in this case complex judgments that certain activities should be put beyond the range of control by the political branches of the Government. In constitutions, as in statutes, language may embody a compromise of competing moral claims, though nothing in our federal Constitution resembles the relatively precise accommodation of the criminal law rules governing use of force in self-defence. The fact that the Constitution itself represents moral evaluations does not, of course, establish that moral evaluation is also the task of those who must decide if statutes and their applications fall a foul of constitutional restraints.

Widespread agreement exists on the appropriateness of some other techniques of interpretation. The point if clearest for actions that the language of the Constitution, the intent of the Framers, and the decisions of earlier courts place squarely within the area of constitutional protection. For these actions, a modern court will rarely need to engage in any debatable moral evaluation. Usually it will apply the plain law, perhaps after determining that no overwhelming argument has been made contrary to the indications of these powerful sources. Even for harder cases, judicial interpretation is not simple moral evaluation; the implications of the textual language, the Framers' intent, and the precedents count for something if they point in one direction or another.

To the same effect, Michael J. Perry in 'Morality Politics and Law' 1988 Edn. states at page 129 as under:

According to the view of democracy that underlies originalism, it is illegitimate for the judiciary to go beyond the enforcement of policy choices to the making of policy choices-at least, it is illegitimate unless the judiciary is authorised to do so by the legislative and executive branches. And it is illegitimate in extremis for the undemocratic judiciary to oppose itself, in constitutional cases, to the democratic branches and agencies of Government on the basis of beliefs never constitutional zed by the ratifiers.

189. Therefore, this Court cannot concern itself with the moral aspect of the impugned amendment. The impugned amendment is the Will of the people expressed through Parliament.

190. In view of the foregoing discussion, these petitions are liable to be dismissed. Accordingly, these petitions stand dismissed.